

2008

Rental Housing Tax Credit **Compliance Manual**



**Indiana Housing and Community
Development Authority**

Indiana Rental Housing Tax Credit Compliance Manual

Preface

This manual is a reference guide for the compliance monitoring of the Rental Housing Tax Credit Program (RHTC). It is designed to answer questions regarding procedures, rules, and regulations that govern RHTC Developments. This manual should be a useful resource for Owners, Developers, Management Companies, and on-site management personnel. It provides guidance with respect to Indiana Housing and Community Development Authority's (IHCDA's) administration of monitoring for compliance under Section 42 of the Internal Revenue Code of 1986 and the Treasury Regulations there under (the "Code") (See [online references at http://ihcda.in.gov/developers_section42.aspx](http://ihcda.in.gov/developers_section42.aspx), ***Compliance Manual***, Appendix A).

In order to realize the benefits afforded by the RHTC Program, it is essential that each building remain in compliance. An especially critical time to ensure compliance is at the time of initial lease-up. Errors made in the screening of applicants for eligibility may have serious implications on the future viability of that building.

IHCDA and its monitoring staff are committed to working closely with Owners, management agents, and on-site personnel to assist them in meeting their compliance responsibilities.

Please note, however, that this manual is to be used only as a supplement to compliance with the Code and all other applicable laws and rules. This manual should not be considered a complete guide to RHTC compliance. The responsibility for compliance with Federal program regulations lies with the Owner of the building for which the Rental Housing Tax Credit is allowable.

Because of the complexity of RHTC regulations and the necessity to consider their applicability to specific circumstances, Owners are strongly encouraged to seek competent professional legal and accounting advice regarding compliance issues. **IHCDA's obligation to monitor for compliance with the requirements of the Code does not make IHCDA or its subcontractors liable for an Owner's noncompliance.**

Disclaimer

The publication of this Manual is for convenience only. Your use or reliance upon any of the provisions or forms contained herein does not, expressly or impliedly, directly or indirectly, suggest, represent or warrant that your Development will be in compliance with the requirements of the Internal Revenue Code of 1986, as amended. The Indiana Housing and Community Development Authority and contributing authors hereby disclaim any and all responsibility of liability, which may be asserted or claimed arising from reliance upon the procedures and information or utilization of the forms in this manual. You are urged to consult with your own attorneys, accountants, and tax consultants.



Section 1 – Introduction

Part 1.1 Background of the RHTC Program

The Authority is empowered to act as the housing credit agency for the State to administer, operate and manage the allocation of RHTCs also known as the Low-Income Housing Tax Credit program pursuant to Section 42 of the Code.

In 1986, Congress enacted the Rental Housing Tax Credit (RHTC) Program. This program provides incentives for the investment of private equity capital in the development of affordable rental housing. The RHTC reduces the Federal tax liability of Development Owners in exchange for the acquisition, rehabilitation, or construction of affordable rental housing units that will remain income and rent restricted over a long period. The amount of RHTC allocated is based on the number of qualified low-income units that meet Federal rent and income targeting requirements.

The RHTC is authorized and governed by Section 42 of the Internal Revenue Code of 1986, as amended (“Code”). The Indiana Housing and Community Development Authority (IHCDA) is the designated “housing credit agency” to allocate and administer the RHTC Program for the entire state.

Each state develops a Qualified Allocation Plan (“QAP”), which establishes the guidelines and procedures for the acceptance, scoring, and competitive ranking of applications and for the administration of the RHTC Program. The Indiana QAP is developed to be relevant to state housing needs and consistent with state housing priorities.

Part 1.2 Contents and Summary

Section 42 of the Code requires that each state’s Qualified Allocation Plan provide a procedure that the agency will follow in notifying the Internal Revenue Service (IRS) of any noncompliance with the provisions of Section 42 of which it becomes aware. This provision became effective on January 1, 1992.

Final regulations developed by the IRS and published on September 2, 1992, and January 14, 2000, outline minimum requirements for Owner record keeping and reporting, state credit agency monitoring and inspecting, and reporting to the IRS instances of noncompliance (See [online references at http://ihcda.in.gov/developers_section42.aspx](http://ihcda.in.gov/developers_section42.aspx), *Compliance Manual*, Appendix A).

Indiana’s compliance monitoring plan follows the final regulations, as well as the recommendations of the National Council of State Housing Agencies (NCSHA), and is applicable to all Owners of all buildings, which have ever claimed the Rental Housing Tax Credit since the inception of the program in 1987.



Part 1.3 Compliance Period

Once allocated by the housing credit agency, Rental Housing Tax Credits can be claimed annually over a ten (10) year period (“Credit Period”) beginning either with the year the building is placed in service or the following year, depending on which option is selected by the Owner. Developments must, however, remain in compliance for a minimum of fifteen (15) years. Additionally, Owners who agreed in their Final Applications to have longer Compliance Periods will be bound for the length of time specified.

A. Compliance Period For All RHTC Developments

All Developments receiving a Credit allocation since 1987 must comply with eligibility requirements for a period of 15 taxable years beginning with the first taxable year of a building’s Credit Period (the “Compliance Period”).

B. Compliance Period For Credit Allocations After December 31, 1989

Developments receiving a Credit allocation after December 31, 1989, will have entered into a Declaration of Extended Low-Income Housing Commitment with the Indiana Housing and Community Development Authority (IHCDA) at the time a final allocation of Credit was issued (IRS Form 8609). These Developments must comply with eligibility requirements for an Extended Use Period. The Extended Use Period is either an additional 15 years beyond the 15-year Compliance Period (a total of 30 years), or the date specified in the Declaration of Extended Low-Income Housing Commitment, whichever is longer.

Earlier termination of the Extended Use Period is provided for under certain circumstances in the Code. However, if a Development received ranking points for delaying enactment of such earlier termination, the Owner will be bound by this election in the Declaration of Extended Low-Income Housing Commitment.

C. Compliance Period For Credit Allocations for 1987 through 1989 Only

As stated above, Developments receiving a credit allocation prior to January 1, 1990, have a 15-year Compliance Period. However, any building in such a Development that received an additional allocation of credit after December 31, 1989, must comply with eligibility requirements in effect beginning January 1, 1990, and will also be bound by a Declaration of Extended Low-Income Housing Commitment (Revenue Ruling 92-79).

The one exception to post 1989 eligibility requirements is in calculation of rents. The rent calculation is based on 1.5 persons per bedroom. However, eligibility for occupancy is still based on the number of people occupying that unit.

Section 2 – Responsibilities

The entities/persons involved in the compliance of the RHTC Program are IHCD, the Development Owner, and the Management Company. The various responsibilities for these entities/persons are set forth below.

Part 2.1 Responsibilities of the Indiana Housing and Community Development Authority

The Indiana Housing and Community Development Authority (IHCD) allocates and administers the RHTC program for the State of Indiana. The responsibilities of IHCD are as follows:

A. Issue IRS Form 8609 (Low-Income Housing Certification)

An IRS Form 8609 is prepared by IHCD for each building in the Development. Part I of the Form is completed by IHCD and then sent to the Owner when the Development is placed in service and all required documentation is received by IHCD.

The Owner must complete Part II of the Form in the first taxable year for which the credit is claimed. After completion of Part II, a copy of the Form is sent to the RHTC Compliance Department of IHCD. The original is sent to the IRS with the Owner's personal, partnership, or corporate tax returns in the first taxable year in which the Credit is claimed and each year thereafter in the Compliance Period. IHCD will not issue an IRS Form 8609 for each year of the Compliance Period. Therefore, before signing and dating Part II of the Form, the Owner should make copies of it.

Owners are strongly encouraged to consult with their legal and/or tax advisors for advice on completing and filing IRS tax forms. IHCD will not give legal or tax advice on the filing or completion of any tax forms.

The issuance of the IRS Form 8609 begins the compliance-monitoring period. A sample copy of IRS Form 8609 is included in the online references at http://ihcd.in.gov/developers_section42.aspx, Compliance Manual, in Appendix B.

B. Review Declaration of Extended Low-Income Housing Commitment

IHCD will review the Declaration of Extended Low-Income Housing Commitment prior to issuance of the IRS Form 8609 for each property. This document must be recorded before the end of the calendar year in which the Credit is first claimed. When the original recorded document is returned to IHCD with the Final Application and all fees have been paid, the IRS Form 8609 will be sent to the Owner if everything is appropriate and satisfactory to IHCD.

C. Review Annual Owner Certifications

For information on Annual Owner Certification, see Section 5, Part 5.4

D. Conduct File Monitoring and Physical Unit Inspections

IHCDA will perform a file review for each development within two (2) years of the last building being placed in service and at least every three (3) years thereafter. Owners of the selected Developments will be required to provide detailed information on Tenant income and rent for at least 20% or more of the low-income units in the Development. Information to be reviewed will include, but is not limited to, the Annual Income Certifications, the documentation received to support those certifications, and rent records. Owners must provide **organized** tenant files to IHCDA with documentation in chronological order. For more information on monitoring, see Section 5, Part 5.6.

IHCDA also retains the right either by a third party inspector contracted by IHCDA or by IHCDA staff to perform a physical inspection of any low-income building and/or unit at any time during the Compliance and Extended Use Periods with or without notice to the owner.

E. Notify IRS of Noncompliance

IHCDA will notify the IRS of instances of potential noncompliance. For information on noncompliance, see Section 6, Part 6.6.

F. Retain Records

IHCDA will retain all Owner Certifications and records for not less than three years from the end of the calendar year in which they are received. IHCDA will retain records of noncompliance or the failure to certify compliance for six years after its filing of an IRS Form 8823, Low-Income Housing Credit Agencies Report of Noncompliance.

G. Conduct Training

Prior to a request for and issuance of IRS Form 8609 the property management staff assigned to the Development and owner of a Development that has not received 8609's from our Agency, must receive an IHCDA Rental Housing Tax Credit Compliance Seminar completion certificate.

The Owner must attend Indiana's RHTC Compliance Seminar or other RHTC training at least once every three (3) years thereafter.

IHCDA will conduct or arrange compliance training seminars and will disseminate information regarding the dates and locations of such seminars. In addition, IHCDA RHTC staff can be contacted at:

Multifamily Housing Department
Indiana Housing and Community Development Authority
30 South Meridian Street, Suite 1000



Indianapolis, IN 46204

Telephone: (317) 232-7777

Fax: (317) 232-7778

H. Possible Future Subcontracting of Functions

It is currently the intent of IHCDA to perform all file reviews listed above and outlined in the Regulations governing this program. IHCDA may, however, at some future time, decide to retain an agent or private contractor to perform some of the responsibilities listed above, in its sole discretion. Owners will be notified of the name and contact persons of the private contractor.

Part 2.2 Responsibilities of Development Owner

Each Owner has chosen to utilize the Rental Housing Tax Credit Program to take advantage of the available tax benefits. In exchange for these benefits, the Owner that will benefit low-income Tenants must meet certain requirements.

Owners have provided comprehensive Development information with evidence of overall economic feasibility. Prior to issuance of a final Credit Allocation, the Owner must certify to the total development costs in such form, manner, and detail that IHCDA may from time to time prescribe. The Owner must also certify that all RHTC Program requirements have been met. Any violation of RHTC Program requirements could result in the loss of Credit allocated.

Responsibilities of Development Owners also includes, but is not limited to:

- A. Leasing RHTC units to Section 42 eligible Tenants**
- B. Charging no more than the maximum RHTC rents (including utilities)**
- C. Maintaining the property in habitable condition**

The Owner is responsible for ensuring that the RHTC Development is maintained in a decent, safe, and sanitary condition in accordance with appropriate standards. Failure to do so is a reportable act of noncompliance.

- D. Complying with IRS & State record-keeping requirements**

The Owner of any building for which Credit has been or is intended to be claimed must keep records that include all of the information set forth below, on a building basis, for a minimum of six years after the due date (with extensions) for filing the Federal income tax return for that year. However, the records for the first year of the Credit Period must be kept for six years beyond the filing date of the Federal income tax return for the last year of the Compliance Period of the building.

The records must include the following:



- The total number of residential rental units in the building (including the number of bedrooms and the size in square feet of each residential rental unit);
- The percentage of residential rental units in the buildings that are low-income units;
- The rent charged on each residential rental unit in the building and the applicable Utility Allowance;
- The number of occupants in each low-income unit;
- The low-income unit vacancies in the building and information that shows when and to whom the next available units were rented (this information must include the unit number, Tenant name, move-in dates, and move-out dates for all Tenants, including market rate Tenants);
- The income certification of each eligible person in the Household;
- Documentation to support each eligible Tenant's income certification;
- The Eligible Basis and Qualified Basis of the building at the end of the first year of the Credit Period; and
- The character and use of the nonresidential portion of any building included in the Development's Eligible Basis (for example, any community building, recreational facility, etc. available to all Tenants and for which no separate fee is charged).

E. Attending Indiana's RHTC Compliance Seminar or other RHTC training at least once every three (3) years.

F. Being knowledgeable about:

- The credit year of the Development;
- Placed-In-Service Dates;
- Relocation of existing Tenants, if applicable;
- The Minimum Set-Aside elected (20/50, or 40/60);
- The percentage of the units that are RHTC eligible, or floor space that is RHTC eligible;
- The year that Credit was first claimed;
- The terms under which the RHTC reservation was made; and
- The Building Identification Number (BIN) of each building in the Development.

G. Complying with the terms of the Initial and Final Applications;

H. Remitting monitoring fees in a timely manner;

I. Reporting to IHCD any changes in ownership or management of the property;

If a change in ownership occurs, a detailed description of the change must be provided in writing to IHCD.

In addition, the Owner must notify IHCD immediately in writing of any changes in the ownership composition or in the management agent, such as name, address, and telephone number.



J. Preparing and submitting Annual Owner Certifications;

The Owner of any building(s)/Development which has claimed or plans to claim Rental Housing Tax Credits must certify to IHCD, under penalty of perjury, annually, for each year of the Compliance Period, on IHCD's Owner Certification form.

K. Training on-site personnel; and

The Owner must make certain that the on-site management knows, understands, and complies with all the Code applicable rules, regulations, and policies governing the Development.

L. Notifying IHCD of any noncompliance issues.

If the Owner and/or management agent determines that a unit, building, or an entire Development is not in compliance with RHTC Program requirements, IHCD should be notified immediately. The Owner and/or management agent must formulate a plan to bring the Development back into compliance and advise IHCD in writing of such a plan.

Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the IHCD need not be reported to the IRS by the IHCD. The Owner and/or management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

Example: A household was initially income qualified and moved into a unit on January 1, 2007. The maximum LIHTC gross rent is \$500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of \$1,000. On February 1, 2007 the Owner and/or management agent noticed the unit is out of compliance during and internal audit, because the rent charged exceeded the maximum LIHTC Rent Limit. On February 1, 2008, the Owner and/or management agent immediately corrected the noncompliance issue, documented the file as to what the noncompliance issue was, date that it was corrected and what actions were taken to correct the noncompliance issue. On June 21, 2007 the IHCD notified the Owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered and corrected prior to the Owner and/or management agent's notice of the IHCD's upcoming compliance review, the IHCD is not required to report the noncompliance issue to the IRS.

M. Provide all pertinent property information to the management company (i.e. Final Application for rental housing financing, Declaration of Rental Housing Tax Credit Commitment.

2.3 Responsibilities of the Management Company & On-site Personnel



The Management Company and all on-site personnel are responsible to the Owner for implementing the RHTC program requirements properly. Anyone who is authorized to lease apartment units to Tenants should be thoroughly familiar with all federal and state laws, rules, and regulations governing certification and leasing procedures. It is also important that the Management Company provide information, as needed, to IHCDA and submits all required reports and documentation in a timely manner.

The Owner is ultimately responsible for compliance and proper administration of the RHTC Program.



Section 3 – Regulations

The following section highlights some of the statutory and regulatory provisions directly affecting Development compliance. **The following is not meant as an exhaustive listing of compliance regulations.**

Part 3.1 Calculating and Claiming the RHTC

A. The Annual RHTC Amount

The maximum amount of Credit that can be allocated is calculated by multiplying the “Eligible Basis” by an “Applicable Fraction” to ascertain the “Qualified Basis” and then multiply by the “Applicable Credit Percentage.”

QUALIFIED BASIS = Eligible Basis X Applicable Development Fraction

ANNUAL RHTC = Qualified Basis X Applicable Credit Percentage

The annual credit allocated may not exceed this amount; however, it may be less if IHCDCA determines that this maximum amount is not necessary.

(For definitions of Qualified Basis, Applicable Fraction, and Applicable RHTC Percentage, see the Glossary in Section 7.)

In addition, the Credit amount allocated to each building in a Development is partially calculated on the following criteria;

1. The Eligible Basis is assigned to a building at the time of final Credit allocation (issuance of IRS Form 8609). Although the Owner apportions the amount of Eligible Basis for each building on its Allocation Certification Request to IHCDCA, the total Eligible Basis of the Development will be limited by the total amount of Credit that IHCDCA actually allocated to the Development. In calculating the Credit amount for each building, IHCDCA may adjust the Owner’s Eligible Basis apportionment per building so as not to exceed the maximum Credit amount allocated to the Development.
2. The Applicable Fraction is assigned to a building at the time of final Credit allocation (issuance of IRS Form 8609). This fraction is defined by the Code as the lesser of:
 - a. low-income units to total units (whether or not occupied) in a building; or
 - b. total floor space of low-income units to total floor space of total units (whether or not occupied in a building).

B. Claiming RHTC in the Initial Year

The Credit is claimed annually for ten years and the Credit Period can begin in the year that the building is placed in service (or the following year if there is an election to defer the Credit Period). During the first year of the Credit Period, the low-income occupancy

percentage is calculated on a monthly basis. The calculation begins with the first month in which the Development was placed in service even though the building may not be occupied during that month. Occupancy for each month is determined on the last day of the month.

An IRS Form 8609 is completed for each building in the Development receiving RHTCs and is filed with the taxpayer's return for the first year of the Credit Period. Owners can elect to defer the start of the Credit Period by checking the appropriate box on the IRS Form 8609. A sample copy of Form 8609 and its instructions are located in [the online references at http://ihcda.in.gov/developers_section42.aspx](http://ihcda.in.gov/developers_section42.aspx), [Compliance Manual](#), Appendix B.

C. Initial Year Prorate

A Development claiming Credit in the initial year of occupancy is subject to a special provision that limits the Credit to a proportionate amount based on average occupancy during the year.

For example: If one-half of the low-income units were occupied in November and the remaining one-half were occupied in December, the building would be treated as being in service for 1.5/12 (12.5% - all for December and half for November) of the year for a calendar year partnership. In the 11th year, the disallowed credit of 10.5/12 (87.5%) could be claimed.

If a qualified low-income Tenant becomes ineligible prior to the end of the initial RHTC year, that unit cannot be counted in the first year toward the Minimum Set-Aside for purposes of determining the Qualified Basis.

D. The Two-Thirds Rule

If an Owner decides to take the RHTC for a property in the initial year when, for example, only 80% of the units are rented to RHTC eligible Tenants, the maximum Qualified Basis for the entire Credit Period would be 80% with the remaining 20% eligible for two-thirds credit if later rented to eligible Tenants.

E. Claiming Credit in the Remaining Years of the Compliance Period

Owners must file an IRS Form 8586 (Low-Income Housing Credit) with the Internal Revenue Service every year in the Compliance Period. This Form indicates continuing compliance and the Qualified Basis of the Development each year of the compliance period. A sample copy of IRS Form 8586 is located in [the online references at http://ihcda.in.gov/developers_section42.aspx](http://ihcda.in.gov/developers_section42.aspx), [Compliance Manual](#), Appendix B.

Part 3.2 Minimum Set-Aside Requirements and Income Limits

A. Minimum Set-Aside Election

By the time Credit is allocated, the Owner has elected one of the following Minimum Set-Aside elections on a Development basis:



1. At least 20% of available rental units in the Development must be rented to Households with incomes not exceeding 50% of Area Median Income adjusted for family size.
2. At least 40% of available rental units in the Development must be rented to Households with incomes not exceeding 60% of Area Median Income adjusted for family size.

The Minimum Set-Aside must be met on a Development or building basis depending on the election made by the Owner on IRS Form 8609, Part II. **Once the election of the minimum set-aside is made on IRS Form 8609, it is irrevocable.** Thus, the applicable Minimum Set-Aside and the corresponding rent restrictions apply for the duration of the Compliance Period and Extended Use Period applicable to the Development.

The Owner may have also elected to target a percentage of the units to persons at lower income levels and/or to target a higher percentage (number) of units to low-income persons. These Development Owners must also comply with those elections.

B. Maximum Income Limits

Income Limits for qualifying Tenants depend on the minimum low-income set-aside election the Owner has chosen. Qualifying Tenants in Developments operating under the “20/50” election may not have incomes exceeding 50% of Area Median Income adjusted for family size. Qualifying Tenants in Developments operating under the “40/60” election may not have incomes exceeding 60% of county Median Income adjusted for family size.

Developments that were funded by the IHCDA prior to 2003 are both rent restricted, as well as income restricted at the AMI levels selected in their final application submitted to IHCDA, and are required to meet those State set-asides identified and recorded in the Extended Use Agreement. Developments funded on or after 2003 are rent restricted only at the individual AMI levels selected in the final application submitted to IHCDA, and are recorded in the Extended Use Agreement, in addition to the requirement of meeting the Federal minimum low-income set-aside election the Owner has chosen for income restrictions, either the “20/50” or “40/60” set-aside.

The U.S. Department of Housing and Urban Development (HUD) publishes Median Income information for each Indiana County on an annual basis. Upon receipt of this information, IHCDA will post the new Annual Income Limits and corresponding rent limits on our website or mail to agencies by request. This information is provided by IHCDA only for the owner’s convenience as a courtesy. However, it is the responsibility of the Developer/Owner, and not the Indiana Housing and Community Development Authority (IHCDA), to verify its accuracy.

Owners may not anticipate increases in Income Limits and corresponding rents. Limits remain in effect until HUD officially publishes new annual limits each year. Income and Rent Limits are provided in Appendix F.

When determining if a Household's income is at or below the applicable limit, the income from each adult Household member 18 years or older that will be living in the unit must be included (See Appendix D).

If the Household income of a qualifying unit increases above 140% of the income limit and the unit initially met the qualifying income requirements, the unit may continue to be counted as a qualifying unit as long as the unit continues to be rent restricted and the next available unit of comparable or smaller size is rented to a qualified low-income Tenant. **Please see Part 3.5 of the IHCD Compliance Manual for further clarification of the 140% Rule/Next Available Unit Rule.**

Part 3.3 Maximum Gross Rents

The maximum gross rent is the greatest amount of rent, including Tenant paid utilities except telephone and cable television, which can be charged for a RHTC unit. (See Section 3, Part 3.4 for Utility Allowance information)

A. Developments Allocated Credit After January 1, 1990

Developments receiving RHTC allocations after January 1, 1990, must be rent restricted based on an imputed, not actual, family size. Family size is imputed by number of bedrooms in the following manner:

1. An efficiency or a unit which does not have a separate bedroom – 1 individual; and
2. A unit, which has 1 or more separate bedrooms – 1.5 individuals for each separate bedroom.

The maximum gross rent is calculated as 30% of the applicable Median Income for the imputed Household size (notwithstanding that the actual Household size may be different).

For Example:

Income Limits (by Household size)

<u>One Person</u>	<u>Two Persons</u>	<u>Three Persons</u>	<u>Four Persons</u>
\$10,000	\$15,000	\$20,000	\$25,000

The rent for a two-bedroom unit is calculated based on the imputed Household size of three persons (1.5 persons for each of the two bedrooms). Annual rent is 30% of the income limit for the imputed Household size [(\$20,000 x 30%) divided by 12 months equals \$500]. The \$500 amount would be the maximum allowable gross rent regardless of the number of persons actually occupying the two-bedroom unit.

B. Allowable Fees and Charges

Customary fees that are normally charged to all tenants, such as damage deposits, cleaning deposits, pet deposits, application fees and/or credit deposits are permissible.



However, an eligible Tenant cannot be charged a fee for work involved in completing the additional forms of documentation required by the RHTC Program, such as the Certification of Tenant Eligibility or verification documents.

26 CFR Part 1 and 602 Section 1.42-11 Provision of services

- (a) General rule. The furnishing to tenants of services other than housing (whether or not the services are significant) does not prevent the units occupied by the tenants from qualifying as a residential rental property eligible for credit under section 42. However, any charges to low-income tenants for services that are not optional generally must be included in gross rent for purposes of Section 42(g).
- (b) Services that are optional – (1) General rule. A service is optional if payment for the service is not required as a condition of occupancy...

(3) Required services – (i) General rule. The cost of services that are required as a condition of occupancy must be included in gross rent even if federal or state law requires that buildings owners offer the services to tenants.

Accordingly, redecorating fees, recertification fees, and any other type of fees (regardless of name or characterization) that are charged to the tenant for services required as a condition of occupancy, may be charged, but must be included in the calculation of gross rent.

If after occupying a unit, an eligible Tenant cannot pay the rent, the Owner has the same legal rights in dealing with the income-eligible Tenant as with any other Tenant.

C. Section 8 Rents

Gross rent does not include any payments made to the owner to subsidize the tenants' rent, including Section 8 or any comparable rental assistance program to a unit or its occupants.

D. Amenities and Services

Charges for any mandatory amenities and/or services, such as garages, carports, meals, laundry, rental insurance and housekeeping, must be counted as part of the gross rent for RHTC units. Charges for optional services other than housing do not have to be included in gross rent, but they truly must be optional. Additionally, any services the tenant chooses to pay for that are provided by the Development must be listed in the tenant's lease with the cost of each individual service clearly listed. (See IRS Notice 89-6 and IRS Revenue Ruling 91-38, online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix A)

Moreover, charges for use of any facility that is in the property's eligible basis are not permitted. For example, a Development may not charge a tenant for the use of a clubhouse or swimming pool if it is included in eligible basis.



Part 3.4 Utility Allowances

The maximum gross rent includes the amount of Tenant paid utilities. Utilities include heat, electric, water, sewer, oil, gas, and trash, where applicable. Utilities do not include telephone or cable television.

When utilities are paid directly by the Tenant (as opposed to the Development), a Utility Allowance must be used to determine maximum eligible unit rent. The Utility Allowance (for utility costs paid by the Tenant) must be subtracted from the maximum gross-rent to determine the maximum amount of allowable Tenant-paid rent.

For example:

If the maximum gross rent on a unit is \$350 and the Tenant pays utilities with a Utility Allowance of \$66 per month, the maximum rent chargeable to the Tenant is \$284 (\$350 minus \$66).

If all utilities are included in the Household's gross rent payment, no Utility Allowance is required. The IRS requires that Utility Allowances be set according to IRS Notice 89-6 ([online references at http://ihcda.in.gov/developers_section42.aspx](http://ihcda.in.gov/developers_section42.aspx), Compliance Manual, Appendix A). IRS Notice 89-6 lists the different sources of Utility Allowances for RHTC developments, which include the following:

- A. Rural Development Financed Development– Use Rural Development Utility Allowances.
- B. HUD Development Based Subsidy Regulated Buildings – Use HUD approved Utility Allowances.
- C. Individual apartments occupied by residents who receive HUD assistance – Use the HUD Utility Allowance as given by the Public Housing Authority (PHA) administering the assistance for those Tenants only.
- D. Buildings without Rural Development or HUD assistance- Use the PHA Utility Allowance. An interested party may request the utility company estimation of actual utility consumption for each unit of similar size and construction in the building's geographic area. Such an estimate must be in writing, signed by an appropriate local utility company official, prepared on the utility company's letterhead, and maintained in the Development file for the Development. Use of the actual utility rates, whether higher or lower, is required once they have been requested.

***NOTE: The Owner must use the most current applicable utility allowance and provide documentation annually.**

Contact the appropriate agency or department to request current Utility Allowance information.

To remain in compliance, Owners must utilize the correct and most current Utility Allowance in order to properly determine unit rents. An increase in the Utility Allowance will increase the gross rent and may cause the rent to be greater than the maximum allowable rent, in which case the contract rent must be lowered. When a Utility Allowance changes, rents must be re-figured

within ninety (90) days of the effective date of the change to avoid violating the gross rent limitations of Section 42. Utility Allowances need to be reviewed and updated as follows:

- When the rents for a Development or building are changed or there is a change in who pays the utilities;
- Within 90 days of an update by HUD, Rural Development, PHA, or local utility supplier;
- Within 90 days of a change in the applicable allowance (e.g., a new Tenant is receiving HUD Section 8 rental assistance); and/or
- Annually for Developments or buildings with documentation from a local utility supplier. Developments must provide documentation supporting the use and applicability of local utility allowances.

Part 3.5 Rules Governing the Eligibility of Particular Residential Units

A. Vacant Units

Units that have never been occupied cannot be counted as “low income,” but must be included in the “total units” figure for purposes of determining the applicable percentage.

The transfer of existing Tenants to never-occupied units is not allowed for purposes of meeting the Minimum Set-Aside or Applicable Fraction.

B. Vacant Unit Rule

Vacant units, formerly occupied by low-income individuals, may continue to be treated as occupied by a qualified low-income Household for purposes of the Minimum Set-Aside requirement (as well as for determining qualified basis) provided reasonable attempts were or are being made to rent the unit or the next available unit of comparable or smaller size to tenant having a qualifying income before any units in the development were or will be rented to tenants not having a qualifying income.

Units cannot be left permanently vacant and still satisfy the requirements of the RHTC program. The Owner or manager must be able to document attempts to rent the vacant units to eligible Tenants.

C. 140% Rule/Next Available Unit Rule

If the income of the occupants of a qualifying unit increases to more than 140% of the income **limit, due to an increase in income or subsequent to the initial income qualification, there is a decrease in the Area Median Gross Income,** the unit may continue to be counted as a low-income unit as long as the following criteria is met: 1) the unit continues to be rent-restricted **at the state set-aside,** and 2) the next available unit of comparable or smaller size **in the same building** is rented to a qualified Low-income Household. **If the income of the occupants of a qualifying unit increases more than 140% of the income limit, the qualifying unit will no longer qualify as a low-income unit,**

if any residential rental unit in the building, of comparable or smaller size, is occupied by a new resident whose income exceeds the income limitation. The determination of whether the income of the occupants of a qualifying unit qualifies for the purposes of the low-income set-aside is made on a continuing basis, with respect to both the tenant's income and the qualifying income for the location, rather than only on the date the tenant initially occupied the unit. In Developments containing more than one low-income building, the available unit rule applies separately to each building in the Development. Additionally, the property must maintain all State and Federal Set-Aside requirements stated in the development's final application and recorded in the Deed Restriction.

Under § 1.42-15(a), a low-income unit in which the aggregate income of the occupants of the unit rises above 140% of the applicable income limitation under § 42(g)(1) is referred to as an “over-income unit.”

Section 1.42-15(c), provides that a unit is not available for purposes of the available unit rule when the unit is no longer available for rent due to contractual arrangements that are binding under local law (for example, a unit is not available if it is subject to a preliminary reservation that is binding on the owner under local law prior to the date a lease is signed or the unit is occupied).

Noncompliance with the Next Available Unit Rule can have significant consequences even in 100% RHTC buildings. If any comparable unit that is available or that subsequently becomes available is rented to a non-qualified resident, all over-income comparably-sized or larger units for which the available unit was a comparable unit within the same building lose their status as low-income units and are out of compliance with Section 42.

Example 1:

A property contains 10 units of equal size. Units 1-7 are qualified low-income units and units 8 and 9 are market rate units, unit 10 is a currently vacant market rate unit. The applicable fraction of the building is 70%. On September 1, the income of the tenants in unit 4 is determined to exceed 140% of the income limit. The rent for this unit continues to be rent restricted, and therefore the property continues to be in compliance and the applicable fraction decreases to 60%. In order to remain in compliance, unit 10 must be rented to a qualified household to replace unit 4 as a qualified low-income unit. On November 1, a qualifying household moves into unit 10, thus the current applicable fraction increases to 70%.

Example 2:

A property contains 10 units of equal size. All 10 units are qualified low-income units. The applicable fraction of the building is 100%. On September 1, the income of the tenants in unit 4 is determined to exceed 140% of the income limit. The rent for this unit continues to be rent restricted, and therefore the property continues to be in compliance and the applicable fraction decreases to 90%. On November 1, a non-qualified household moves into unit 10, due to an error. At the time of the move in, the current applicable fraction was equal to 90%, excluding all over-income units. The non-qualified household moving into unit 10 caused a Next

Available Unit Rule violation and all over-income units (unit 4) cease to be treated as low-income units. The date of non-compliance would be November 1.

Example 3:

A property contains 10 units of equal size. Units 1-7 are qualified low-income units and units 8 and 9 are market rate units, unit 10 is a currently vacant market rate unit. The applicable fraction of the building is 70%. On September 1, the income of the tenants in unit 4 is determined to exceed 140% of the income limit. The rent for this unit continues to be rent restricted, and therefore the property continues to be in compliance and the applicable fraction decreases to 60%. On November 1, a market rate household moves into unit 10. At the time of the move in, the current applicable fraction was equal to 60%, excluding all over-income units. The market rate unit moving into unit 10 a Next Available Unit Rule violation and all over-income units (unit 4) cease to be treated as low-income units. The date of non-compliance would be November 1.

D. Unit Transfer of Existing Tenants

1. Unit Transfers Within the Same Building

Another issue that can potentially affect continued eligibility is unit transfers. Effective September 6, 1997, the Next Available Unit Rule was modified to allow residents of RHTC units to transfer to other units *within the same building* without having to re-qualify for the program. Also, the vacated unit now assumes the status that the newly occupied unit had immediately before the transfer. This provision applies only to Households under Leases entered into or renewed after September 26, 1997, and is not retroactive. For prior Leases, all transfers, including those within the same building, must have been treated as new move-ins.

The main implication for this change in regulation is that households that are over-income at re-certification have the ability to move into a different unit without being disqualified from the program. However, the transfer must be well documented in the Tenant's file and the Tenant's eligibility must continue to be certified and verified annually as with all RHTC Households.

2. Unit Transfers Outside the Same Building

Developments that contain multiple buildings within one project may allow residents of RHTC units to transfer to other RHTC units outside of the same building without having to re-certify them for the program, similar to unit transfers within the same building. The household's income must be no greater than 140% of the applicable income limit. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it. NOTE: This provision applies only if the owner has selected Yes under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?"

For developments where the owner has selected No under Part II 8b on the IRS Form 8609 to the question, "Is the building part of a multiple building project?" the household must be treated as a new move in if the household desires to transfer to a



different RHTC unit outside of the same building. All application, certification, and verification procedures must be completed for the transferring of resident(s), including the execution of new income and asset verifications to determine continued eligibility. The vacated unit assumes the status the newly occupied unit had immediately before the current resident occupied it.

Management is not permitted to transfer qualifying Tenants to non-qualified vacant units in order for the Development to meet the Minimum Set-Aside requirements elected at the time of application. Such action is considered noncompliance with Section 42 of the Internal Revenue Code and will be reported to the Internal Revenue Service (IRS) via IRS Form 8823.

Part 3.6 Rules Governing the Eligibility of Particular Tenants and Uses

A. Household Composition

Household composition may change after the tenant moves into a unit. However, at the time of application the applicant should be asked if household composition would change at all in the next twelve months. If so, the change and any subsequent estimated income should be reflected on the tenant income certification.

Moreover, if all original members of a Household vacate a unit, the Household will no longer be treated as a Qualified Unit if the current Household's income is above the Section 42 limits. To determine if at least one of the original members of the Tenant Household still resides in the unit, Household composition information must include the size of the Tenant Household and the names of all individuals residing in the unit.

B. Student Status

Student status and Household composition must be monitored. A unit that becomes occupied entirely by full-time Students could turn such a unit into a non-qualified Household that is no longer eligible for RHTC's.

For purposes of the RHTC program, IRC § 151(c)(4) defines, in part, a "student" as an individual, who during each of 5 calendar months (may or may not be consecutive) during the calendar year in which the taxable year of the taxpayer begins, is a full-time student (based on the criteria used by the educational institution the student is attending) at an education organization described in IRC §170(b)(1)(A)(ii).

An education organization as defined by IRC §170(b)(1)(A)(ii), is one that normally maintains a regular faculty and curriculum, and normally has enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses.

Most Households where all of the members are full-time Students are not eligible tenants and units occupied by these Households may not be counted as RHTC units, even if the Household has an income that would qualify under RHTC income limits. The number of credit hours and the definition of full-time are defined by the school the Student attends.

There are four exceptions to the full-time Student restriction. Full-time Student Households that are income eligible and at least one of the Household members satisfies one or more of the following conditions can be considered an eligible Tenant. A Household comprised entirely of full-time Students may not be counted as a qualified Household under the RHTC Program, unless the Household meets one of the following four exceptions:

1. All Household members are full-time Students, and such Students are married and **are entitled to** file a joint tax return;
2. The Household consists of single parents and their children, and such parents and children are not dependents of another individual;
3. At least one member of the Household receives assistance under Title IV of the Social Security Act [Aide to Families with Dependant Children (AFDC) or Temporary Aide to Needy Families (TANF)]; or
4. At least one member of the Household is enrolled in a job-training program receiving assistance under the Job Training Partnership Act or similar federal, state, or local laws.

For purposes of qualifying Households containing Students to live in RHTC Developments, IHCD will:

- Consider a single person Household ineligible if he or she is a full-time Student at the time of initial occupancy or will be at any time during the certification period (unless the individual meets one of the student exceptions described above);
- Consider a Household of Students eligible if it includes at least one part-time Student or one Household member meets one of the Student exceptions described above;
- Consider a Household containing full-time Students and at least one child (who is not a full-time Student) an eligible Household;
- Consider TANF an acceptable Title IV program exception.

In addition, IHCD requires owners to utilize a lease provision in all RHTC units requiring tenants to notify management of any change in Student status.

C. Unborn Children and Child Custody

An owner can count an unborn child when determining Household size and applicable income limits. The owner must obtain an applicant/tenant self-certification from the household certifying the pregnancy and **such statements must exist in the Tenant's file.**

Additionally, when determining Household size, owners should include children subject to a joint custody agreement, who live in the unit at least 50 percent of the time. **However, a child may not be counted in more than one tax credit unit for household size.**

D. Managers/Employees as Tenants

Resident manager or employee units may be considered in one of the following ways:

1. The manager/employee unit could be considered a common area or other special facility within the Development that supports and/or is reserved for the benefit of all



the rental units provided the employee worked full-time for the Development in which he/she lives. Under this interpretation, the unit would be excluded from the low-income occupancy calculation and the manager could use the unit without concern as to the effective rent being charged or the income level of the manager.

OR

2. The manager's unit could be treated as rental unit and the unit could be included in the low-income occupancy percentage calculation for the RHTC building. Under this interpretation, the income level of the manager and the effective rent charged would effect the low-income occupancy percentage calculation for the building.

In Revenue Ruling 92-61, the Internal Revenue Service ruled to include the unit occupied by the resident manager in the building's Eligible Basis, but exclude the unit from the Applicable Fraction for purposes of determining the building's Qualified Basis.

However, the consideration of the resident manager's unit must be specified in the Development's Initial & Final Multifamily Housing Finance Application and must be approved by IHCD. IHCD must approve the use of all manager/employee units.

Additionally, IHCD will consider requests for additional manager/employee units during the Compliance Period for good cause. To request a manager/employee unit the Owner must submit the request in writing with documentation supporting the need for the manager/employee unit.

E. Model Units

IHCD recognizes that it may be standard industry practice to utilize a model unit(s), during a project's rent-up period to show prospective tenants the desirability of the project's units. The use of a model unit can be a good marketing tool, in respect to the immediate ability to show the unit without disturbing current tenants in occupied units.

Under IRC §42, a model unit is considered a rental unit and therefore the model unit's cost can be included in the building's eligible basis and in the denominator of the applicable fraction when determining a building's eligible basis. There are several different ways a project can utilize a model unit:

- **Model is utilized during the rent-up period and is later used as a qualified rental unit and rented to a qualified household. The cost of the unit should be included in the building's eligible basis. In the years that the unit was utilized as a model unit, it should be included in the denominator of the applicable fraction when determining a building's eligible basis, however it should not be included in the numerator of the applicable fraction. Once the unit is rented to a qualified household, the owner should follow the rules outlined in IRC §42(f)(3) for increases in qualified basis; i.e., the "2/3 credit" rule.**
- **Model is utilized during the rent-up period, as well as the entire compliance period. If a model unit is never rented as a LIHTC unit, then it should not be included in the numerator of the applicable fraction when determining a building's qualified basis. However, the costs of the unit should be included**

in the building's eligible basis and in the denominator of the applicable fraction when determining a building's eligible basis.

- A qualified unit that becomes vacant is utilized as a model unit on a temporary basis. Provided that the unit remains available for rent and is treated like all other qualified units, it may be included in both the numerator and denominator of the applicable fraction when determining a building's eligible basis. Unit should be shown as "Vacant" on the Annual Owner Certification of Compliance and the Rent Roll, and not listed as "Model Unit." Also, the development must continue to make reasonable attempts to rent out the vacant units used as model units.

F. Live-in Care Attendants

A live-in care attendant for a RHTC Tenant should not be counted as a Household member for purposes of determining the eligible income and rent limits. The need for a live-in care attendant must be certified with documentation from a medical professional (i.e. a letter from the Tenant's doctor) included in the Tenant/Unit File. If the qualified Tenant vacates the unit, the attendant must vacate as well. If an attendant would like to be certified as a qualified Tenant and remain in the unit, normal certification procedures must be performed and the individual must meet the applicable eligibility requirements of the program.

G. Non-Transient Occupancy

Under program requirements, a unit cannot be RHTC eligible if it is used on a transient basis. A unit is deemed to be transient if the initial Lease term is less than six months. There is an exception to this rule for single room occupancy (SRO) Development assisted under the Stewart B. McKinney Act.

SRO housing must have a minimum Lease term of one month. Federal rules allow for month-by-month Leases for the following types of housing:

1. SRO units in Developments receiving McKinney Act and Section 8 Moderate Rehabilitation Assistance;
2. SRO units intended as permanent housing and not receiving McKinney Act assistance; or
3. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a **building** which is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and 3) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

H. Community Service Facilities

In Revenue Ruling 2003-77, the Internal Revenue Service ruled the Community Service Facilities could be included in a building's Eligible Basis if certain criteria are met. The services provided at the facilities can include, but are limited to, day care, career counseling, literacy training, education, recreation and outpatient clinical health care. This ruling is included in the online references at

Part 3.7 Other Regulations

A. For Use by the General Public

The Owner or agents of the Owner shall not discriminate in the provision of housing on the basis of race, color, sex, national origin, religion, familial status, or handicap. Additionally, Owners cannot refuse to accept a prospective Tenant based solely on the fact that the applicant holds a Section 8 rental voucher or certificate. All Owners, managers, and staff members should be familiar with both state and federal civil rights and fair housing laws. In addition, all RHTC properties with five (5) or more **HOME** units must have a HUD approved Affirmative Fair Housing Marketing Plan and a copy of the approved plan must be submitted to IHCDA within one year of the first building placed in service. In addition, Fair Housing Marketing Plans must be updated according to the policies of the Fair Housing and Equal Opportunity Office of the Department of Housing and Urban Development (HUD). HUD must also submit all updated Fair Housing Marketing Plans to IHCDA upon approval.

Under program requirements, RHTC units must be available for use by the general public. Owners are allowed to establish preferences for certain population groups (i.e. homeless individuals, persons with disabilities, etc.). These preferences, however, must not violate HUD's anti-discrimination policies.

In addition, if a residential rental unit is provided only for a member of a social organization or provided by an employer for its employees, the unit is not for use by the general public and is not eligible for Credit under Section 42. (See Section 1.42-9).

IHCDA strongly encourages owners and management companies to provide Fair Housing and Equal Opportunity training for all staff, including maintenance staff, associated with any property. Staff should attend a Fair Housing and Equal Opportunity training at least once every calendar year.

IHCDA has established procedures for processing Fair Housing complaints made to IHCDA regarding RHTC properties. The procedures are as follows: 1) IHCDA will forward all written Fair Housing complaints to the Fair Housing and Equal Opportunity Office at HUD and also to the Indiana Civil Rights Commission; 2) IHCDA will notify the owner and management company of such complaint; and 3) if at any time during the Compliance Period it is found that a violation of the Fair Housing Act has occurred at any RHTC Development, the property is out of compliance with Section 42 of the Code and IHCDA will report such noncompliance to the IRS via IRS Form 8823.

B. General Occupancy Guidelines/Household Size

There are no current RHTC requirements governing minimum or maximum Household size for a particular unit. However, Owners must comply with all applicable local laws, regulations, and/or financing requirements (i.e. if Rural Development, use Rural Development regulations).

IHCDA advises all Owners or agents to be consistent when accepting or rejecting Applications. Occupancy guidelines or requirements should be incorporated into the Development's management plan. Management should be aware of occupancy standards set by federal, state, HUD, PHA, civil rights laws, Tenant/landlord laws, and municipal code that may establish a maximum or minimum number of persons per unit.



Section 4 – Qualifying Tenants for RHTC Units

Potential Tenants of low-income, rent-restricted units should be advised early in the Application process that there are maximum Income Limits that apply to these units. Management should explain to potential Tenants that the anticipated income of all adult persons expecting to occupy the unit must be verified prior to occupancy and then annually re-certified for continued eligibility.

The Code states that determination of Annual Income of individuals and median Gross Income adjusted for family size must be made in a manner consistent with HUD Section 8 income definitions and guidelines. HUD Handbook 4350.3, *Occupancy Requirements of Subsidized Multifamily Housing Programs* should be used as a reference guide and HUD Handbook 4350.3 CHG-27 is included as Appendix D of this manual. A complete HUD Handbook 4350.3 may be obtained through the HUD Handbook clearinghouse by telephoning (800) 767-7468.

Part 4.1 Tenant Qualification & Certification Process

RHTC units are eligible for the RHTC Program if proper documentation verifying the Tenants' eligibility is placed in the Tenants' file. **At a minimum, the following items must be located in the Tenants' file and must be organized in chronological order for easy review:**

1. Initial Tenant Application for residency;
2. Tenant Eligibility Questionnaire signed by the Tenant for every year the Tenant resides at the property, including certification of assets and disposal of assets, if applicable;
3. Tenant Income Certification signed by the Tenant for every year the Tenant resides at the property with proper signature and effective dates clearly stated (**effective date of TIC must be date of move-in or re-certification**);
4. Verifications of Income and Assets for all income sources noted on the Tenant Eligibility Questionnaire for all years;
5. Any other documentation verifying the Tenants' eligibility (i.e. Student status verification, unborn child self-certification, joint custody of a child documentation, etc.); and
6. Initial and subsequent leases and lease addendum executed by the Tenant and Owner.

Part 4.2 Tenant Application & Tenant Eligibility Questionnaire

A fully completed Application and Tenant Eligibility Questionnaire is critical to an accurate determination of Tenant eligibility (See Appendix E for a sample Tenant Eligibility Questionnaire). The information furnished on the Application and Tenant Eligibility Questionnaire should be used as a tool to determine all sources of income, including total Assets and income from Assets, and Student status.

Revised HUD 4350.3 lists guidelines, which the Owner may want to adopt for the Application process. The Application should include:

- A. The name, age, social security number, relationship, handicap (if units are set-aside for such tenants and are part of the Development's Extended Use Agreement), and



sex of each person that will occupy the unit (legal name should be given just as it will appear on the Lease and Tenant income certification);

- B. All sources and amounts of current and anticipated Annual Income expected to be derived during the twelve-month certification period. Include Assets now owned; indicate whether or not family members disposed of Assets for less than Fair Market Value during the previous two years;
- C. The current and anticipated Student status of each applicant during the twelve-month certification period;
- D. A screening process (i.e. previous landlords' credit information). Owners should ask applicants whether the family's assistance or tenancy in a subsidized housing program has ever been terminated for fraud, nonpayment of rent, or failure to cooperate with re-certification procedures;
- E. The signature of the applicant and the date the Application was completed. It may be necessary to explain to the applicant that all information provided is considered confidential and will be handled accordingly; and
- F. Collection of demographic data. Beginning January 1, 1999, all Owners of Developments were required to offer all applicants for housing in Credit units the opportunity to voluntarily disclose on his/her Application for an apartment or Credit unit the following information concerning the members of his/her Household that will be occupying the unit:

The following information is requested in order to help monitor and observe those impacted by and/or benefiting from the RHTC Program. The Tenant is not required to furnish this information, but is encouraged to do so. The Owner or property manager may not discriminate on the basis of this information or on whether or not the Tenant chooses to furnish it. However, if the Tenant chooses not to furnish it, the Owner or property manager must note race on the basis of visual observation and/or surname. If the Tenant does not wish to furnish the information, the Tenant's wishes should be indicated on the demographic data form completed by the Tenant.

As an additional requirement of the review process, each Owner will be required to annually submit a compilation of this information on the Rental Housing Tax Credit Development Compliance Report. Failure to submit this information will be considered an act of non-compliance and reported accordingly on IRS Form 8823.

At the time of Application, it is the management agent's responsibility to obtain sufficient information on all prospective Tenants to completely process the Application and complete the Certification of Tenant Eligibility. IHCDCA recommends that roommates complete separate Applications. The Tenant Application and Tenant Eligibility Questionnaire is the first step in the Tenant Certification process.

Part 4.3 Tenant Income Verification

The income of every prospective occupant of the unit must be verified. All regular sources of income including income from Assets must be verified. **Verifications must be received by the management agent prior to move-in.** Verifications must be from a third party and contain complete and detailed information and include, at a minimum, direct written Verification from all sources of regular income and income of Assets.

A. Effective Term of Verification

Third party Verifications of income are valid for **120** days prior to move-in. After this time, **if the tenant has not yet moved in,** a new written **third party** Verification must be obtained.

B. Methods of Verification

Three methods of verification are permitted:

1. Written Verification

A reasonable effort to obtain written third-party Verification is required. IHCD does not require that the Owner/Management Agent use particular form for third-party Verifications; however, sample third-party Verification forms are included in Appendix E. All requests for income Verification must:

- a) State the reason for the request;
- b) Include a release statement signed and dated by the prospective Tenant;
- c) Provide a section for the employer or other third-party source to state the applicant's current anticipated gross Annual Income or rate of pay, number of hours worked, and frequency of pay. Bonuses, tips, and commissions must be included. Spaces should also be available for a signature, job title, phone number, and date **(if forms are returned with any information incomplete, management MUST complete clarification form to document incomplete information)**; and
- d) Probability and effective date of any increase during the next twelve (12) months.

Owners must send Verification forms directly to the third party, not through the applicant.

2. Second party Verification & Electronic Verification

Owners may use documents submitted by the applicant or tenant only if:

- a) Information does not require third-party Verification (such as birth certificates or adoption papers verifying Household membership, divorce decrees, etc.); or
- b) Third-party verification is impossible or delayed beyond two weeks of the initial request. Owners must show efforts (i.e. phone logs, fax receipts, certified mail

receipts, etc.) to obtain the third party Verifications before the use of second party Verifications will be permitted.

- c) There is a fee associated with receiving the third party verification. For example, if a bank will charge a fee for providing bank account information on a checking account, the Owner may verify the account by obtaining the most recent six months of bank statements from the tenant.

The Owner must be able to reasonably project expected income for the next twelve months from the second party Verification. For example, if third party verification of employment income is impossible and efforts to obtain the third party verification have been made and delayed two weeks, the Owner may obtain the six (6) most current consecutive pay stubs from the Tenant. The Owner must place copies of the second party Verifications and the efforts to obtain a third party Verification in the tenant's file.

Additionally, if third party verification is impossible to get from the third party or is delayed, the Owner may use information obtained electronically from e-mail or the internet. For example, an Owner may receive the fair market value of a house from an internet site that provides that information from the comparable real estate in the area.

3. Verbal Verification

When written Verification is not possible prior to move-in, direct contact with the source will be acceptable to IHCD only as a last resort and should be followed by written Verification. The conversation should be documented in the applicant's Tenant File to include all information that would be contained in a written Verification. The information must include the name, title, and phone number of the contact, the name of the on-site management representative accepting the information, and the date the information was obtained.

In addition, if the Owner receives third party Verifications that are not clear or are not complete, a documented verbal clarification may be accepted if it includes, the name and title of the contact, the name and signature of the on-site management representative accepting the information, and the date.

Furthermore, if after requesting a third-party verification, the third-party indicates that the information must be obtained from an automated telephone system, the Owner may document the information provided from the telephone system. The documentation must state the date the information is received, all of the information provided, and the name, signature, and title of the person receiving the information.

4. Public Housing Authority Verification

In the case of a Tenant receiving housing assistance payments under the Section 8 Program, the Income Verification requirement is satisfied if the public housing authority provides a statement to the building owner certifying that the tenant's income does not exceed the applicable income limit under Section 42(g) of the Internal Revenue Code.

The only documents that will be acceptable from the public housing authority are HUD Form 50058; HUD Form 50059 or the IHCD approved form in Appendix E (if

provided by the local public housing authority). The Form must be completed in its entirety by a qualified representative of the public housing authority and list the members of the Household and the gross income of the Household before and any deductions that the Household may be eligible for under the Section 8 Program. These forms will not be considered valid Verifications if they are older than 120 days from the Tenant's move-in date or Certification date.

Once the Owner receives the HUD Form 50058; 50059 or IHCA approved PHA form, no other Verifications of income are required. However, Verifications for other Section 42 eligibility requirements such as Student status and the Eligibility Questionnaire must still be completed and placed in the Tenant's file. The Owner may not rely on the HUD Form 50058; 50059 or PHA form if a reasonable person in the Owner's position would conclude that the Tenant's income is higher than the Tenant's represented Annual Income. Additionally, the HUD Form must be signed by both the tenant and Housing Authority Representative when used as the Income Certification.

5. Verification Transmittal

Applicants should be asked to sign two copies of each Verification form. The second copy may be used if the first request has not been returned from the source in a timely manner.

Income Verification requests must be sent directly to the source by the Owner or management agent and returned by the source to the Owner or management agent. Under no circumstances should the applicant or resident be allowed to send or deliver the Verification form to the third party source. It is suggested that a self-addressed, stamped envelope be included with the request for Verification, to ensure a timely response. In addition, fax copies of Verifications are acceptable.

All Tenant income Verifications should be date stamped as they are received.

6. Acceptable Forms of Income Verification

For information concerning acceptable forms of income Verification for Employment Income, Self-employment Income, Social Security/Pensions/Supplemental Security Income (SSI)/Disability Income; Unemployment Compensations, Alimony or Child Support Payments; Recurring Contributions and Gifts; Scholarships, Grants, Veteran's Administration Benefits; etc., see HUD Handbook 4350.3 CHG-27, which is included as Appendix D.

Social Security and Supplemental Security Income

IHCDA will accept the Annual Benefit Award letter provided from the Social Security office to verify Social Security Benefits. However, all Supplemental Security Income is required to be verified and dated within 120 days prior to the certification date.

Child Support Verification



As guidance to the owner regarding child support verification, IHCD requires the following documentation to verify income from child support:

- The tenant must be asked on the Application for tenancy and/or the Tenant Eligibility Questionnaire if anyone in the Household is **entitled** to receive child support;
- If the tenant is entitled and is currently receiving child support, a copy of the court order, divorce decree, or a verification from the agency administering the child support payments must be received;
- If the tenant is entitled to receive child support, but has not received a payment within the previous year, verification from the agency administering the child support payments in the county the person is moving from must be received by the owner. In addition, an affidavit from the tenant to the owner certifying that a) the tenant is not receiving child support payments; b) the reason the tenant is not receiving the payments; and c) the efforts made by the tenant to receive the payments must be obtained from the tenant;
- If the tenant is entitled to receive child support, but payments over the previous year have been sporadic (i.e. more than one third of the payments have not been paid), the owner may average the payments received over the previous year to project anticipated income for the next twelve months;

C. Differences in Reported Income

The management agent should give the applicant the opportunity to explain any significant differences between the amounts reported on the Application and amounts reported on third-party Verifications in order to determine actual income. The explanation of the difference should be documented in the Tenant File.

D. Annual Income

Annual Income is defined as the gross amount of anticipated income to be received by all adult members of the Household (18 years of age and older, including full-time and part-time Students) during the 12 months following the date of certification or re-certification. For information regarding what Annual Income includes, calculating Annual Income, and Annual Income exclusions, see HUD Handbook 4350.3 CHG-27, which is included as Appendix D. Note that RHTC Income Limits are based on gross Annual Income, not adjusted Annual Income. Allowances commonly used in some government programs, such as child care allowance, elderly Household allowance, dependent allowance, handicapped assistance allowance, etc., are not permitted to be subtracted from the Household's Gross Income to determine income eligibility for RHTC units.

E. Assets

Assets are items of value, other than necessary personal items. Income from Assets must be taken into consideration when determining the eligibility of a Household. Asset information (Asset value and income from Assets) should be obtained at the time of Application.



1. Net Family Assets Greater than \$5,000

Third-party Verification of the value of income from Assets is required when the combined value of the Assets held by all members of the Household exceeds \$5,000. Third-party Verification must be obtained for the initial certification of the Household and for each re-certification.

If net family Assets exceeds \$5,000, Asset Income (which must be included as part of Household income) will be the greater of: a) actual Asset Income; or b) net family Assets times the HUD approved passbook rate for the area (the Imputed Income from Assets). Local HUD offices periodically publish the HUD approved passbook savings rate.

2. Net Family Assets Less than or Equal to \$5,000

Owners of RHTC Developments do not have to obtain third-party Verification(s) of the value of Assets if the Household submits to the Owner a signed, sworn statement that the combined value of the Assets of the Household is less than \$5,000. The sworn statement must include a listing of the Household's Assets, the cash value of each Asset, and the tenant's actual Annual Income from each Asset (i.e. annual interest rate). The Household must complete this form for the initial Tenant Income Certification and for each subsequent re-certification. **However, the Owner may not rely on the low-income Tenant's signed, sworn statement of annual income from Assets if a reasonable person in the Owner's position would conclude that the Tenant's income is higher than the Tenant's represented Annual Income.**

If net family Assets are less than or equal to \$5,000, Asset Income will equal actual yearly income from Assets. **The yearly income from Assets must be included as part of Household income.**

For more information regarding what net Household Assets include and do not include, and determining the value of and income from Assets, see HUD Handbook 4350.3 in Appendix D.

F. Computing the Total Household Income

After all income and asset information has been obtained and computed for a Household, all qualified sources of income are added together to derive the total Household income. In order for the Household to qualify for a RHTC unit, the total Household income must be at or below the maximum allowable qualifying income in effect at the time of Tenant certification. If the total Household income is greater than the maximum allowable qualifying income, the Household cannot be certified for a RHTC unit.

Part 4.4 Move-In Dates

A. RHTC Developments Involving the Acquisition and Rehabilitation of a Building(s)

If a building is occupied at the time it is acquired and remains occupied throughout the period in which it is being rehabilitated, all existing Tenants (those who occupied the building when it was acquired) must be documented as having been income-eligible **by no**



later than 120 days after the date of acquisition using the income limits in effect on the day of acquisition. The effective date of the tenant income certification is the date of acquisition.

Tenants who moved into the unit after the date of acquisition must be documented as RHTC-eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a Household must be RHTC-eligible at the time of actual move-in to the unit, using the income limits that are in effect at time of move-in.

For purposes of Rev. Proc. 2003-82, the incomes of the individuals occupying a unit occupied before the beginning of the first credit year must be tested for the Next Available Unit Rule under IRC §42(g)(2)(D)(ii) and Treas. Reg. 1.42-15 at the beginning of the first year of the building's credit period using the following requirements:

1. The test must be completed within 120 days prior to the beginning of the first year of the credit period.
2. The "test" consists of confirming with the household that sources and amounts of anticipated income included on the TIC are still current. If additional sources or amounts of income are identified, all additional sources must be verified and added to the current TIC. If income sources have not changed, it will not be necessary to complete new third party verifications.
3. If the household is over-income based on current income limits, the Next Available Unit Rule must be applied.

If tenants are eligible and proper documentation has been obtained for each tenant, the standard annual Tenant Income Re-certification requirement will then be implemented annually, beginning with the initial certification date.

B. RHTC Developments Involving Rehabilitation Only

If a building is occupied during rehabilitation, all existing Tenants (those who occupied the building while it was being rehabilitated) must be documented as having been RHTC-eligible by no later than 120 days after the rehabilitation Placed in Service Date. Tenants who moved into the unit after the rehabilitation Placed in Service Date must be documented as RHTC-eligible at the time of actual move-in to the unit. If the building is not occupied during rehabilitation, a Household must be RHTC-eligible at the time of actual move-in to the unit.

C. RHTC Developments Involving New Construction

In newly constructed buildings, all Households must be documented as being RHTC-eligible at the time of actual move-in to the unit.

D. Mixed Income Developments

In Developments that have less than a 100% Applicable Fraction, if a Tenant is designated as market rate at the time of actual move-in to the unit, but later is re-designated as a RHTC

Household, the Tenant must have been certified as a RHTC Household at the time of re-designation.

Part 4.5 Annual and Interim Income Re-certification Requirements

The Owner must perform, at least on an annual basis, an income certification for each Low-income Household and receive documentation to support that certification. IHCD monitors re-certification 365 days from the later of: the move-in date or the one-year anniversary of the effective date of the previous certification. Upon receipt of all Verification, Owners or managers should determine if the unit still qualifies for participation in the Rental Housing Tax Credit Program.

Owners may utilize effective dates when performing Tenant Certifications. Therefore, the Tenant may sign the Tenant Certification before the date the certification takes effect. **However, all Income and eligibility Verifications must be valid (not older than 120 days) on both the signature date and effective date of the Tenant Certification.** In addition, if the Owner chooses to utilize effective dates on Tenant Certifications, the Owner should have language in the Tenant Certification indicating that the Tenant must inform the Owner of any changes of income, student status, or Household composition, that may occur between the date the Tenant signs the Certification and the effective date of the Certification.

Whenever a re-certification indicates that the composition of the Household has changed, RHTC-eligibility must be re-evaluated. Composition changes include a birth, a death, a new Tenant moving into the Household, and an existing Tenant vacating the Household. In the event a new member is added to a qualifying Household, the following steps must be taken:

1. The new Household member should complete an Application and Eligibility Questionnaire and Verification of income and Assets must be completed;
2. The new Household member's income must be included as part of the Household's certified income. The combined Household income must be compared to the maximum allowable income limit in effect at the time and based on actual Household size; and
3. If the combined Household's income is greater than 140% of the current maximum allowable income, a determination must be made as to whether the building or Development will be in violation of Section 42 requirements by adding the new Tenant.

Example: 1 person Household income limit = \$15,000
 2 person Household income limit = \$17,000
 140% of 2 person income limit = \$23,800

Tenant A is a qualified Tenant living alone in a one-bedroom unit. Her income at initial certification was \$10,500. Eight months after Tenant A moved into the Development, she informs management that she is getting married and that her new husband, Tenant B, will be moving into the unit in two months. At the time of re-certification, Tenant B is certified as earning \$12,900. The Household's combined income will be \$23,400. The Household will still qualify, since it is below 140% limit of \$23,800. If the combined income of Tenants A and B would exceed 140% of the current income limit, the next available unit rule may go into effect.

NOTE: Only the income and eligibility of the new resident is required to be verified when adding a member to a Household before the Annual Tenant Income Certification is due. Owners may verify the new resident's income and add it to the existing Household's certified income to determine if the Household's income has exceeded the 140% income limit. **However, the new resident should sign a Tenant Certification and annual re-certifications must occur at least one year from the effective date of the existing Household's Tenant Certification.**

Also, note the following in regard to re-certification requirements:

- A. If Tenants in a previously qualified Household become full-time Students at any time, the Household can only be considered as a qualified RHTC Household if at least one of the Student criteria is met as described in Part 3.6 of this manual. This eligibility determination must be made immediately upon the Tenant becoming a full-time Student and cannot be delayed until a re-certification of the Household is due.
- B. In the event that a Tenant moves into a building prior to the Placed-In-Service Date of the building (as shown on the Development's IRS Form(s) 8609), and the Verification of the Tenant's income was performed more than 120 days prior to the Placed-In-Service Date, the Tenant must be re-certified on the Placed-In-Service Date. **All income Verifications must be valid (no older than 120 days) on the Placed-In-Service Date.**
- C. In the event Household composition changes in any way, i.e., birth, death, marriage, divorce, or a family member or roommate vacates the unit, the Household should notify management of the changes.
- D. See Part 3.5 for information regarding unit transfers.

Part 4.6 Annual Re-certification Waivers

IRS Revenue Procedure 2004-38, replaces IRS Procedure 94-64 becoming effective on July 6, 2004, establishing the procedure on how to seek a waiver of the Annual Income Re-certification requirement allowed by Section 42 of the Code (online references at http://ihcda.in.gov/developers_section42.aspx, Compliance Manual, Appendix A).

The law provides that "on application of the taxpayer, the (Treasury) Secretary may waive any annual re-certification of Tenant income for purposes of Section 42(g), if the entire building is occupied by low-income Tenants." Although the Code uses the word "building" with reference to waivers, requests are made for complete Developments. Waivers will not be granted for individual buildings. In addition, although the Code uses the word "re-certification waiver", the requirement for the Owner to annually receive 3rd party income Verifications for Tenants is the only requirement that actually is waived.

A. General Waiver Information

When an Owner receives a waiver from the IRS, the Owner then will not be required to:

- 1. Keep records showing income Verifications of any occupant who has previously had his or her Annual Income, verified, documented, and certified;*
- 2. Maintain income Verification documentation; or*



3. Certify to the Indiana Housing and Community Development Authority that such documentation has been received.

The waiver only waives the requirement to obtain Verifications of Income and Assets of existing residents. All new applicants/residents must be fully qualified with complete verifications and certifications. This includes existing residents who transfer to a different apartment outside the same building.

Additionally, a Tenant Certification must still be completed showing the anticipated Income the Tenant expects to receive in the next twelve months and the Student status of the Tenant. Finally, rents must still be tracked on an ongoing basis to ensure that restricted rent levels are maintained and Utility Allowance requirements are followed. IHCD is still required by the IRS to perform compliance monitoring reviews of the development at least once every three years.

At a minimum, the following items must continue to be present in the Tenant's file when the property obtains the waiver:

1. Initial Application, Tenant Eligibility Questionnaire, Tenant Certification, and Verifications of Income, Assets and other eligibility requirements from the move-in date of the Tenant;
2. Annual Tenant Certifications and Tenant Eligibility Questionnaires with the anticipated Income the Tenant expects to receive in the next twelve months and the Student status of the Household (after the initial Tenant Certification, Income Verifications are no longer required);
3. Initial and subsequent leases.

Note: The Annual Owner Certification of Compliance, monitoring fees, and supporting documents are still a requirement for a Development with a waiver.

B. Term of Waiver

The waiver will take effect on the date the Service approves the waiver.

The Owner must continue standard re-certification practices until the waiver letter is actually received from the IRS, and a copy is furnished to IHCD.

A waiver remains in effect unless revoked by the IRS. The IRS can revoke a waiver for the following reasons:

- If a building ceases to be 100% RHTC;
- If IHCD reports compliance problems through the submission of a Form 8823 to the IRS;
- There is a pattern of households comprised entirely of full-time students;
- Owner no longer submits Annual Owner Certification of Compliance to IHCD;
- Change in ownership of the property (will be revoked automatically for change in ownership);
- Building ceases to be decent, safe and sanitary for tenants;
- The IRS determines that owner has violated Section 42 in a manner that is sufficiently serious enough to warrant revocation.

If revocation occurs, the Owner of the property will have to re-certify all residents, beginning on the effective date of the revocation, as if the waiver had never been granted.

C. Waiver Conditions

To obtain a waiver, the Development must meet the following criteria:

1. No non-compliance issues are outstanding;
2. Each current resident is a qualified low-income resident;
3. All adult Tenants in the Household have signed a sworn statement to document income in accordance with procedures in Revenue Procedure 2004-38 (See online references at http://ihcda.in.gov/developers_section42.aspx, Compliance Manual, Appendix A);
4. The Development is one hundred percent (100%) RHTC eligible;
5. The Development has received an IRS form 8609 and has been through at least one reporting cycle with IHCDA, including tenant file review and Annual Owner Certification of Compliance review;
6. The Development must have no outstanding items of noncompliance with Section 42 Regulations; and
7. The Development and its owner(s) and management agent must be in good standing with IHCDA.

D. Requesting a Waiver

If an Owner decides to request a waiver, a file review of 100% of the Development's units must be performed.

To request the re-certification waiver the development owner must submit the "Application for the Re-certification Waiver", along with the application fee of \$150.00. The fee must be received before an application will be reviewed. The application fee is non-refundable, but will be credited to the developments total fee if waiver review is completed.

After a review of the property has occurred IHCDA will provide the Owner a statement that each residential unit in the building is in compliance with Section 42. Once the development owner has received the letter from IHCDA, the owner will need to complete and sign Part I of IRS Form 8877 and submit to IHCDA. IHCDA will review the form, complete the State's portion and return to the development owner. The development owner must then complete Part II of Form 8877 and submit the original to the IRS and a copy to IHCDA to be kept with the Development's records. No other party may submit a waiver request.

IRS Form 8877 must be sent to:

The Internal Revenue Service
PO Box 245
Philadelphia, PA 19255

When the IRS approves the waiver, the owner is responsible for sending a copy of the approval notice to IHCD. The development will continue to be treated as a non-re-certification waiver property until the IRS approval letter is received by IHCD.

E. Denial and Appeals Process

Denials

If IHCD finds an issue of non-compliance with the waiver application or any tenant file during the file review process the owner is responsible for providing a timely response to IHCD's correction requests with the following submission guidelines:

- First request – The owner has seven business days to provide the requested documentation. If the owner fails to respond or the documentation fails to correct the issue(s) of non-compliance, a second request will be issued.
- Second request – The owner has five business days to provide requested documentation. If owner fails to respond or the documentation fails to correct the issue(s) a final request will be issued.
- Final request – The owner has three business days to provide the requested documentation.
- If there is not a reply received from the owner, the development will be denied the waiver for failure to respond.

The owner may request an extension in writing for the submission of the requested documentation. No extension request from the management company will be accepted. If the owner received a request from IHCD for information and requires an extension to submit documentation, a written request must be submitted to the Multi-Family Manager at:

30 South Meridian Street, Suite 1000
Indianapolis, IN 46204

The request must be received prior to the last day the submission is due. Failure to follow guidelines may result in the denial of the Re-certification waiver application.

IHCD reserves the right to deny an application even if non-compliance issues are resolved, or for just cause. If IHCD finds patterns of Management/Owner practices that are inconsistent with IRS and/or IHCD standards, the Waiver may be denied. Violations may include, but are not limited to:

- Backdated forms (tenant Income Certifications, Sworn Income and Asset Statements, etc.);
- Correction fluid used on forms;
- Signing required forms prior to dates allowable by IHCD;
- Lack of response on the part of the management/owner to issues identified during the tenant file review process of the development.

Appeals

If the Re-certification Waiver is denied, an appeal must be submitted to IHCD within ten (10) business days from the date of denial. An appeal must be in writing on the Company



letterhead and signed by the Owner. The written appeal must describe in detail why the appeal should be granted and provide documentation to that effect. Appeals need to be submitted to the Multi-Family Manager and the above listed address. IHCD will provide the owner with a written notification of the appeal decision. All decisions to deny an appeal are final. Any Development denied a Re-certification waiver may submit an application the following calendar year and complete the process again.

F. Waiver Fees

The fees for the Re-certification waiver are on a per unit basis. The fee will be \$30.00 per unit with a minimum of \$500.00 for initial review. For each unit that requires a second review (for corrections) an additional charge of \$10.00 per unit reviewed will be imposed.

All initial review fees must be paid in full by no later than ten (10) business days prior to the site review. IHCD reserves the right to cancel reviews if applicable fees are not received on a timely basis. Checks should be made payable to Indiana Housing and Community Development Authority and sent to 30 South Meridian Street, Suite 1000 Indianapolis, IN 46204.

Part 4.7 Lease and Rent Requirements

All residents occupying RHTC units must be certified and under a Lease no later than the time a Tenant moves into the unit. Leasing guidelines are listed below.

A. Lease Requirements

At a minimum, the Lease should include (but is not limited to):

1. The legal name of all parties to the agreement and all other occupants;
2. A description of the unit to be rented; must include unit/bedroom size; and set aside percentage as well as unit address (if unit /bedroom size and set aside percentage can be located on the TIC, it is not mandatory to be on the lease as well);
3. The date the Lease becomes effective;
4. The term of the Lease;
5. The rental amount;
6. The Utility allowance requirements; and monthly allowance being provided;
7. The use of the premises;
8. The rights and obligations of the parties, including the obligation of the Tenant to certify annual (or more frequently as required) to income as defined herein; and
9. Language, which addresses income decreases, income increases, Utility Allowance increases/decreases, basic rent changes (in Rural Development or 236 Developments), family composition changes, or any other change and its impact on the Tenant's rent.

B. Rents

Rents on the RHTC units may not exceed the amounts allowed by Section 42 of the Code. Any violation of overcharging rents is considered non-compliance and an IRS Form 8823 will be issued.



C. Initial Minimum Term of Lease

There must be an initial Lease term of at least six (6) months on all RHTC units. The six-month requirement may include free rental periods. Succeeding Leases are not subject to a minimum Lease period.

Federal regulations do allow shorter Leases for certain types of housing for homeless individuals. The following types of housing are exempt from the six-month minimum Lease period:

1. Single Room Occupancy (SRO) units in Developments receiving McKinney Act and Section 8 Moderate Rehabilitation assistance;
2. Single Room Occupancy (SRO) units intended as permanent housing and not receiving McKinney Act assistance;
3. Single Room Occupancy (SRO) units intended as transitional housing that are operated by a governmental or nonprofit entity and providing certain supportive services; or
4. Units that 1) contain sleeping accommodations and kitchen and bathroom facilities; 2) are located in a **building** which is used exclusively to facilitate the transition of homeless individuals to independent living within 24 months; and 3) for which a governmental entity or qualified nonprofit organization provides such individuals with temporary housing and supportive services designed to assist such individuals in locating and retaining permanent housing.

***Note:** If a Development has units set-aside in a building for homeless Households, those Tenants must have leases with at least six-month terms, unless the building's primary use is described in number four (4) above. **Tax Credit units may never be used as emergency shelters.**

****Note:** Leases must reflect the correct date of move-in, and/or the date the Tenant takes possession of the unit.

D. Lease to Own Program/Lease Purchase Program

The goal of the Lease to Own Program ("Program") is to enable low-income families to purchase a home – something that often would not be possible without the Program. The Development Owner also benefits from the program because the residents who opt for the Program agree to assist in maintaining the unit. Below are several of the minimum requirements for a Lease to Own Program to obtain IHCD approval:

- "Eligible Tenant" shall mean the current tenant of the unit, so long as that tenant is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify under Section 42, but who was qualified at the time of the tenant's original occupancy of the unit.

- The Development Owner must partner with a non-profit organization dedicated to assisting low to moderate-income families in obtaining clean, safe and affordable housing.
- The Development Owner and the non-profit organization must enter into a written Right of First Refusal whereby the Development Owner agrees not to sell the low-income housing unit to anyone else at the end of the fifteen year Compliance Period before offering it to the non-profit organization for a price equal to (i) the sum of all outstanding indebtedness secured by the Development (including capital improvement debt) plus any accrued interest and (ii) all federal, State, and local taxes attributable to the sale.
- The non-profit organization must enter into an agreement with IHCDCA regarding the release of the Declaration of Extended Rental Housing Commitment upon sale to an Eligible Tenant.
- The non-profit organization must enter into an option agreement, which is approved by IHCDCA, with the resident for the purchase of the unit.
- The Program must be structured so that the tenant's total monthly payments for principle, interest, insurance, taxes, utilities, and maintenance after purchase are equivalent to the tenant's monthly rent and utilities before purchase (the Equivalency Principle).
- The unit must be less than thirty (30) years old.
- The unit must meet I.R.C. §42 standards regarding the condition of the unit and habitability.
- The Program must provide for sale at the end of the fifteen year Compliance Period to an "eligible tenant" for a minimum purchase price (as defined in I.R.C. §42(i)(7)(B)).
- The Program must include a system whereby a resident is rewarded for long-term residency by obtaining a credit against the purchase price of the unit.
- After one year of responsible tenancy, the Development Owner must waive its right to not renew the Lease of a Resident without cause.
- The Program should include periodic workshops for residents enrolled in the Program on issues of property maintenance and financial counseling.
- The Program must address common tenant misconceptions including:
 - The misconception that the tenant will acquire the property free and clear after the Compliance Period;
 - The misconception that the tenant is an equity owner in the property rather than simply a tenant;
 - The misconception that the tenant will be compensated for any capital

- improvements made to the property by the tenant;
- the misconception that the tenant's rent will never increase.

The Program must conform to and comply with any future Internal Revenue Service statutes, regulations and rulings regarding lease to own programs.

E. EVICTION OR TERMINATION OF TENANCY

IRS Section 42 regulations state that there must be just cause for Eviction or Termination of Tenancy (non-renewal of lease). Language outlining what actions constitute just cause for Eviction or Termination of Tenancy must be included in writing at the time of initial occupancy, preferably in the lease. The Authority will expect to see documentation in the file when a tenant is evicted or a lease is terminated, outlining the specific cause. See [online references at http://ihcda.in.gov/developers_section42.aspx](http://ihcda.in.gov/developers_section42.aspx), *Compliance Manual*, Appendix A (8) Rev. Proc. 2005-37 – Safe Harbor



Section 5 – Compliance Monitoring Procedures

This section of the manual outlines IHCDAs' procedures for monitoring all Developments receiving Credit. Monitoring is designed to assist the Owners with federal, state, and local regulations regarding IHCDAs' compliance monitoring requirements and procedures in accordance with the IRS guidelines in Section 42 of the Internal Revenue Code. However, compliance is solely the responsibility of the Owner and is necessary to retain and use the Credit.

Monitoring each Development is an ongoing activity that extends throughout the Credit Compliance Period. IHCDAs are required by law to conduct this compliance monitoring and is required to inform the IRS of noncompliance, or the failure of an Owner to certify to compliance, no later than 45 days after the period of time allowed for correction. Notification to the IRS by IHCDAs is required whether or not the noncompliance has been corrected.

Part 5.1. Owner and Management Agent Contacts

Correspondence from IHCDAs to the Owner will be sent to the Owner contact person provided in the Development's Final Application for RHTC. IHCDAs will copy the Management Agent contact person with owner approval, on any correspondence from IHCDAs to the Owner regarding file monitoring reviews and physical inspections. All other correspondence will be sent directly to the Owner contact person.

IHCDAs will allow no more than one Owner contact name and address and one Management contact name and address per Development. If at any time the contact person of the Owner or Management Agent change, it is the sole responsibility of the Owner to inform IHCDAs in writing of such change with supporting documentation.

If the designated Owner contact person requests extra copies of documentation (i.e. copies of Form 8823), the cost of such copies will be \$.10 per single sided page.

Part 5.2 The Compliance Manual

IHCDAs will provide this compliance manual to Owners of RHTC Developments when RHTCs are reserved for a Development. The manual describes the compliance monitoring procedures, which the Owner and management agent must follow.

Part 5.3 Compliance Training Seminars

IHCDAs will conduct periodic RHTC Compliance training seminars. All Development Owners and management agents are required to attend an IHCDAs RHTC Monitoring Compliance Seminar prior to the issuance of an IRS Form 8609. A Form 8609 will not be issued to a Development Owner who has not met the compliance-training requirement. Training will be held periodically throughout the year and information regarding the times and dates of the training will be distributed by IHCDAs and posted on the IHCDAs website.



Owners and Property management staff assigned to the Development must receive, prior to issuance of IRS Form 8609, an IHCDCA Rental Housing Tax Credit Compliance Seminar completion certificate within the last year.

Part 5.4 Initial Information

If the Owner chooses to defer claiming Credit until the year following the year in which the Development is placed in service, the Owner shall notify IHCDCA prior to the end of the year the building is placed in service. Failure to notify IHCDCA of a deferment will be considered noncompliance.

The first year Credit's are claimed the Owner must submit to IHCDCA:

1. The Annual Owner Certification (See online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G);
2. A copy of the completed IRS Form 8609 and Schedule A (Form 8609);
3. Utility Allowance Documentation;
4. Authorized Signatory Form (online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G);
5. Property Directional Form (online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G); and
6. If the property has five (5) or more **HOME** units, a copy of the Affirmative Fair Housing Marketing Plan submitted to HUD by the Owner. Once the Plan has been approved a copy of the approved plan must be submitted to IHCDCA (See online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G). The Affirmative Fair Housing Marketing Plan must be approved by HUD and is a requirement for all RHTC Developments regardless of the placed in date of the Development. Therefore, all Developments that are in their Compliance Periods must have a HUD approved Affirmative Fair Housing Marketing Plan.

Part 5.5 Annual Owner Certification of Continuing Compliance

The Development Owner must annually certify to the Authority, on or before January 31 of each year (the "Owner Certification of Compliance") for the preceding twelve (12) month period. The Owner must certify:

1. The Development meets the requirements of the 20/50 test, the 40/60 test under Section 42 of the Code.
2. There was no change in the Applicable Fraction as defined in the Code of any building in the Development; or there was a change, in the Applicable Fraction, and a description of that change is attached to this certification.
3. The Owner has received an Annual Income Certification form for each low-income Tenant in the Development and sufficient documentation to support that certification;

Or



In the case of a Tenant receiving Section 8 housing assistance payments, the 50058 or 50059 from the applicable public housing authority to the Development Owner showing that the Tenant's income does not exceed the applicable Income Limits under the Code have been received.

4. If a waiver of the requirement for Annual Income Re-certification has been received from the Internal Revenue Service, such waiver has not been revoked and remains valid. A true copy is attached to the certification.
5. Each Low-Income Unit in the Development was restricted as provided under the Code.
6. The Development is in continuing compliance with all promises, covenants, set-asides and agreed upon restrictions as set forth in the application for Credits for the Development.
7. If the Development has benefited from HOME funds, the amount of HOME funds received from IHCD and from other sources, the source of the HOME funds, and the affordability period associated with the HOME funds.
8. The unit types, gross rents, Utility Allowance, and actual rents.
9. All units in the Development are for use by the general public and no finding of discrimination under the Fair Housing Act occurred for the Development. All units are used on a non-transient basis (except for transitional housing units allowed for in the Code). NOTE: If such findings have occurred, documentation of such findings must be attached to the certification.
10. All units in the Development are suitable for occupancy, taking into account all federal, state, and local health, safety, and building codes and the State or local government unit responsible for making health, safety, or building code inspections did not issue a violation report for any building or low-income unit in the Development. If the governmental unit issued a violation report or notice, the owner must attach a statement summarizing the violation report or notice to the certification.
11. There has been no change in the Eligible Basis of any building in the Development (as defined in the Code); there has been a change in the Eligible Basis of the building in the Development (as defined in the Code). Documentation setting forth the nature and amount of such a change (i.e. a common area has become commercial space, or a fee is now charged for a Tenant facility formerly provided without charge) must be attached to the certification.
12. All Tenant facilities included in the Eligible Basis of the Development under the Code, such as swimming pools, recreational facilities, and parking areas, are provided on a comparable basis without charge to all Tenants of the Development.
13. No Low-Income Units in the Building became vacant during the applicable year; or one or more Low-Income Units in the building became vacant during the applicable year and reasonable efforts were or are being made to rent such units or the next available unit or units of comparable size in the building to Tenants having a qualifying income.

14. No Tenant of any low-income units in the Development experienced an increase in income above the limit allowed in the Code; or income of Tenants of a Low-Income Unit in the Development increased above the limit allowed in the Code, and the next available unit of comparable or smaller size in the Development was or will be rented to Tenants having a qualifying income.
15. The Development has at least one smoke detector on each level of the rental dwelling unit.
16. There have been no changes in entity ownership or if there have been, IHCDCA has been provided with all details and all necessary documentation.
17. The Development is in continuing compliance with the Declaration of Extended Low-Income Housing Commitment applicable to the Development and filed in the office of the Recorder of the Indiana County in which the property is located.
18. The Development is otherwise in compliance with the Code, including any Treasury Regulations pursuant thereto, and applicable laws, rules, regulations, and ordinances.

In addition, the Owner must submit a Rental Housing Tax Credit Development Compliance Report (See online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G) for each building in the Development, which must present a detailing of all tenants living in the Building from January 1 through December 31 of the certifying year.

IHCDA has developed a Compliance Reporting System whereby the Rental Housing Tax Credit Development Compliance Report Tenant information may be submitted to IHCDA via its web site. For more information on this system, the owner may contact IHCDA at (317) 232-7777 and ask for the RHTC Compliance Department.

All Annual Owner Certifications and Rental Housing Tax Credit Development Compliance Reports must be typed or computer generated in the same format provided by IHCDA in online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G, or submitted via IHCDA's web site reporting system. IHCDA will not accept any Owner Certification or Development Compliance Report that is not in the same format as provided in the online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G or is hand written. After IHCDA reviews the Certification and the Report, and if it's found to be incomplete in any way, IHCDA will notify the Owner in writing and give an appropriate Correction Period.

A copy of the Annual Certification of Compliance that must be used by all Owners is located in online references at http://ihcda.in.gov/developers_section42.aspx, *Compliance Manual*, Appendix G.

Part 5.6 IHCDCA Tenant/Unit File Review and On-site Development Inspections

As provided in IRS compliance monitoring regulations, IHCDA has the right to review a Development's Tenant/Unit files and record keeping and record retention files, in house (at IHCDA offices) or on-site at the Development and/or to perform physical inspections of RHTC Developments as deemed necessary throughout the Compliance Period.



IHCDA is required to monitor and physically inspect each Section 42 property within two (2) years of the placed in service date and every three (3) years thereafter. However, IHCDA reserves the right to inspect the files and/or physical units of a Section 42 property at any time at its discretion.

A. When performing an on-site (at the Development or management office) review, IHCDA will:

1. As a courtesy the IHCDA will notify the Owner and/or management agent two weeks in advance of the intended site visit, **however, the IHCDA reserves the right to inspect any RHTC Unit at any time at its discretion without prior notification.** **NOTE:** Physical inspection is not limited to vacant units. Staff will ask to inspect specific units no matter if the unit is occupied or not.
2. Inform the management agent which unit files will be inspected.
3. Provide an Exit Interview Summary to management representative.
4. Inform the Owner of any findings of noncompliance with regard to such review.
5. Allow the Owner 90 days to notify IHCDA of any correction of noncompliance.
6. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

NOTE: If files are not available or are in such an unorganized condition that an IHCDA Monitor cannot effectively review the files, the 90-day Correction Period will begin immediately.

See Appendix E for Sample Monitoring Forms

B. When performing an in-house (at IHCDA offices) review, IHCDA will:

1. Notify the Owner in writing which unit files have been selected for review.
2. We respectfully request that **copies of the selected files and documentation either be shipped to the IHCDA or hand delivered by** the Owner **or a Representative of the Owner.**
3. Provide a current rent roll.
4. All files and confidential information will be shredded by the IHCDA.
5. Give a time frame in which the Tenant File documentation must be submitted.
6. Inform the Owner of any findings of noncompliance with regard to such review.
7. Allow the Owner 90 days to notify IHCDA of any correction of noncompliance.
8. Report all instances of noncompliance to the IRS whether or not the noncompliance has been corrected.

C. Prior to performing an on-site Development Inspection, IHCDA will:

1. Notify the owner and/or management company, at the beginning of the calendar year, of the Date and approximate time of the inspection.
 2. Notify the owner and/or the management company, 1-week prior to the inspection; of the approximate time the inspection will take place.
 3. Request that the owners' and/or management company's representative be present and accompany the inspector throughout the entire inspection process.
- NOTE:** It is imperative that **all** units be available for interior inspections as well as exterior (common areas inclusive).



D. After performing an on-site Development Inspection, IHCD A will:

- 1. Provide, if needed, a copy of a Critical Violations Letter, to the property representative, identifying any exigent health, safety, and/or fire hazards observed at the time of the inspection, which need immediate corrections.**
- 2. Forward a copy of the inspection report to the Owner and Management Company indicating a correction time frame.**
- 3. Request that all non-compliance issues be corrected within the time frame specified in the inspection report.**
- 4. Request that legible copies of the proof of the corrections, in the form of legible work orders, receipts, and/or invoices, with an owner signed Affidavit be forwarded to IHCD A within the allotted time frame indicated in the inspection report.**
- 5. Review the correction documents for completeness and forward applicable correspondence indicating that an in depth review of the documents will be completed as soon as possible.**
- 6. Schedule a second inspection if necessary.**
- 7. Review the supporting documents of correction for correlation with the inspection report.**
- 8. Forward correspondence indicating that no further corrective actions regarding the physical condition of the property are needed at this time OR contact the owner by phone detailing what deficiency's, in the corrective correspondence, exist.**

See the inspection process flow chart, in online references at http://ihcda.in.gov/developers_section42.aspx, Compliance Manual, Appendix G, for more information.

Part 5.7 Noncompliance

Noncompliance is defined, as a period of time a Development, specific building, or unit is ineligible for RHTC because of failure to satisfy Program requirements.

For more information on noncompliance, see Section 6.

Part 5.8 Compliance Monitoring Fees

A. Annual Monitoring Fees

Beginning in the calendar year following the year a Development is placed in service, Development Owners shall be required to pay annual monitoring fees for the immediately preceding calendar year, which will be due with each Annual Owner Certification of Compliance on or before January 31. Every Development Owner shall be required to pay \$27 per RHTC unit with a minimum fee of \$230 per development and a maximum fee of \$7000 per development. However, Owners that utilize IHCD A's Compliance Reporting Website shall only be required to remit \$22 per RHTC unit with a minimum fee of \$180 per development and a maximum fee of \$6000 per development.



If IHCDCA does not receive a **complete** Annual Owner Certification of Compliance, subsequent forms and documentation, and monitoring fees by January 31, a fee equal to double the property's annual monitoring fee will be due to IHCDCA by April 30. After April 30, failure to pay fees due to the Authority and submit the required documents shall constitute a violation by the Development and the Development Owner of the Authority's requirements and IHCDCA will report the violation to the IRS.

Additionally, if significant errors are found when the Owner Certification of Compliance and subsequent forms are reviewed by IHCDCA, the Owner may be charged double monitoring fees. Significant errors include, but are not limited to: 1) an unauthorized signatory signing the Owner Certification 2) the owner's signature not being notarized; 3) all required forms and documentation not being submitted by the Owner 4) incorrect tenants/units reported on the RHTC Development Information Report; 5) incorrect or no monitoring fees submitted with the Owner Certification, etc.

B. Correction Fee

A charge of one hundred dollars (\$100.00) per unit/common area and a maximum fee of \$15,000 per development will be imposed for any unit where documentation must be re-inspected after the issuance of IRS Form 8823 because of a finding of noncompliance as a result of a tenant file review or a physical inspection.

A charge of two hundred dollars (\$200.00) per unit and a maximum fee of \$15,000 per development will be imposed for any physical unit re-inspections required after the issuance of IRS Form 8823 because of a finding of noncompliance.

A charge of two hundred dollars (\$200.00) per common area and a maximum fee of \$15,000 per development will be imposed for any physical common area re-inspections required after the issuance of IRS Form 8823 because of a finding of noncompliance.

However, an Owner may request a waiver of the correction fee for good cause. To obtain such a waiver, the Owner must submit the request in writing **detailing and documenting** the reason for the request. Waiver of the correction fee is in IHCDCA's sole discretion.

Part 5.9 Procedures for the Transfer of RHTC and Developments

A. Transfer of Credits Prior to Issuance of Form 8609

As a condition of the Authority's consideration of a proposed transfer of Credits prior to the issuance of Form 8609, the Owner must meet the following criteria:

1. The proposed transferee must submit a new Rental Housing Tax Credit application setting forth any and all information contemplated therein as if the proposed Transferee were the original applicant, sponsor, or Owner (the "new Application"). The new application must be filed and marked to show any and all changes in information from that which is set forth in the original application for RHTC.

2. The proposed transferee must also submit a schedule identifying all differences between the original application for RHTC and the new application with cross references to page numbers and sections which differ.
3. All applicable filing fees for the new application must be paid at the time of the filing of the new applications (See QAP in Schedule N for application fees). The Authority may, in its sole discretion, refund a portion of the fees to the applicant.
4. The proposed transferor and transferee of the Credits must certify that the information set forth in the new application or otherwise filed with the Authority is true, complete, and not misleading in any respect. The proposed transferee shall agree therein to complete the Development in the manner and within the time schedule set forth in the new application and assume all obligations of the transferor to the Authority.
5. The proposed transferor and transferee must submit such further documents, assurances, certificates, and other information and materials in support of the new application as the Authority shall require in its sole and absolute discretion.

Based on the Authority's review of the new application and other filings referred to herein, the Authority may approve or disapprove the proposed transfer in its sole and absolute discretion. No consent or approval of the Authority with respect to the proposed transfer shall be effective without the written consent of the Authority and any attempt to affect a transfer without such prior consent shall be void from inception. Such approval may be conditioned upon receipt by the Authority of any and all documents or instruments to be executed by the proposed transferor and transferee in order to effectuate the transfer contemplated hereby and such future conditions as the Authority may impose from time to time. Consent to a transfer shall not be deemed to be the consent to any subsequent transfer or waiver of the Authority's right to require the Authority's consent to any future transfers. Any consent, action, review, recommendation, approval, or other activity taken by or on behalf of the Authority shall not, expressly or impliedly, directly or indirectly, suggest, represent, or warrant that the sponsor, Owner, and/or Development qualify for the Credit, or that the Development complies with applicable statutes and regulations or that the Development is or will be economically feasible.

B. Transfer of Development After Issuance of Form 8609

Sale of a Building(s) or an interest therein

After the issuance of Form 8609, upon the sale, transfer or disposition of a Qualified Low-Income Building or an interest therein, the transferee shall immediately submit the following to IHCDA:

1. A copy of all sale documents;
2. The newly amended and stated partnership agreement; and
3. Any other additional information the Authority may request.

Receivership Information and Foreclosure

If a building(s) is in the foreclosure process, the receivership documents must be submitted to IHCDA immediately. Additionally, once final foreclosure occurs, the foreclosure documents must be submitted to IHCDA immediately, so that proper reporting to the IRS may occur.



C. Bond for Dispositions of Qualified Low-Income Buildings

Under the Code a taxpayer that disposes of a Qualified Low-Income Building, or an interest therein can defer or avoid recapture by furnishing a bond to the Secretary in an amount satisfactory to and for the period prescribed by the Secretary.

The above bond posting only pertains to situations where it is reasonably expected that the building will continue to be operated as a Qualified Low-Income Building for the remainder of the building's Compliance Period.

A surety holding a Certificate of Authority from the Department of the Treasury, Financial Management Service, must secure the taxpayer's obligation under the bond and that surety must be listed in Treasury Department Circular 570. Taxpayers having problems obtaining a surety through the Circular 570 should call the Internal Revenue Service.

For specific guidance on the bond process, Revenue Ruling 90-60 (*online references at http://ihcda.in.gov/developers_section42.aspx, Compliance Manual, Appendix A*) should be consulted. In the absence of a valid bond, Owners likely will recapture the accelerated portion of the Credit using Form 8611 (*online references at http://ihcda.in.gov/developers_section42.aspx, Compliance Manual, Appendix B*).

The minimum required bond amount is generally the product of the total Credits of the taxpayer times the appropriate bond factor amount. Bond Factor Tables to calculate the above were initially published in Revenue Ruling 90-60, and subsequent updates have been provided via additional Revenue Rulings: 90-88, 91-67, 92-101, 93-83, 94-71, 95-83, 96-16, 96-33, 96-45, and 96-59.

Form 8693 (*online references at http://ihcda.in.gov/developers_section42.aspx, Compliance Manual, Appendix B*) is the correct Form to file to post a Rental Housing Tax Credit disposition bond under Section 42 (o)(6). This Form includes applicable information regarding the building, the Owner, and the surety. This Form is signed by both the Owner and the surety, and should be sent to the IRS.

Alternatively, Revenue Procedure 99-11 establishes a collateral program as an alternative to providing a surety bond to avoid or defer recapture of low-income housing tax credits under Section 42(j)(6) of the Internal Revenue Code. Under this program, taxpayers may establish a Treasury Direct Account and pledge certain United States Treasury securities to the Internal Revenue Service as security. Procedures for establishing the Treasury Direct Account are provided in section 3 of Revenue Procedure 99-11.

Part 5.10 Amendments to Compliance Monitoring Procedures

The compliance monitoring procedures and requirements set forth herein are issued by IHCD A pursuant to Treasury Regulations. These provisions may be amended by the Authority for purposes of conforming to the Treasury Regulations and/or may otherwise be appropriate, as determined by the Authority or the Internal Revenue Service. In the event of any inconsistency or conflict between the terms of these procedures and the monitoring procedures set forth in such Regulations, the provisions set forth in the Regulations shall control.



Noncompliance issues identified and corrected by the owner prior to notification of an upcoming compliance review or inspection by the IHCD A need not be reported to the IRS by the IHCD A. The Owner and/or management agent must keep documentation outlining: the noncompliance issue, date the noncompliance issue was discovered, date that noncompliance issue was corrected, and actions taken to correct noncompliance.

Example: A household was initially income qualified and moved into a unit on January 1, 2007. The maximum LIHTC gross rent is \$500. At time of recertification on January 1, 2008 the owner increased the rent to the market rate of \$1,000. On February 1, 2007 the Owner and/or management agent noticed the unit is out of compliance during an internal audit, because the rent charged exceeded the maximum LIHTC Rent Limit. On February 1, 2008, the Owner and/or management agent immediately corrected the noncompliance issue, documented the file as to what the noncompliance issue was, date that it was corrected and what actions were taken to correct the noncompliance issue. On June 21, 2007 the IHCD A notified the Owner and/or management agent of an upcoming compliance review. Because the noncompliance issue was discovered and corrected prior to the Owner and/or management agent's notice of the IHCD A's upcoming compliance review, the IHCD A is not required to report the noncompliance issue to the IRS.

Part 5.11 Casualty Loss

An Owner that experiences a loss of unit due to fire, natural disaster, or other circumstance must:

1. Inform IHCD A of the loss in writing within 10 days of the incident;
 2. Submit a plan to IHCD A within 30 days that sets a timeframe for reconstruction or replacement of lost units;
 3. IHCD A must report the loss and replacement of the units to the Internal Revenue Service (IRS) after 90 days. If the units have not been fully replaced, IHCD A will attach a copy of the owner's plan and timeframe for replacement to its report. Once all units have been replaced, IHCD A will then report the replacement of the lost units.
- If an Owner fails to report a casualty loss to IHCD A within 10 days. IHCD A will report the incident as noncompliance to the IRS immediately with IRS Form 8823.

Section 6 - Noncompliance

Noncompliance is defined, as a period of time a Development, specific building, or unit is ineligible for RHTC because of failure to satisfy RHTC Program requirements.

Part 6.1 Types of Noncompliance

Generally, during the Compliance Period, a Development is out of compliance and recapture may apply if:

- A. There has been a change in the Applicable Fraction or Eligible Basis that results in a decrease in the Qualified Basis of the building from one year to the next; or
- B. The building no longer meets the Minimum Set-Aside requirements of Section 42, the gross rent requirements of Section 42, or the other requirements for the units which are set-aside; or
- C. There is failure to submit the annual Utility Allowance documentation, Owner Certification, Tenant income, and rent report, or compliance monitoring fees, along with any applicable supporting documentation in a timely manner.
- D. An ineligible Tenant residing in a RHTC Unit.

Part 6.2 Consequences

If the Development is out of compliance, a penalty could apply to all units in the Development. Penalties include:

- A. Additional fees paid to IHCD
- B. Recapture of the accelerated portion of the RHTC for prior years;
- C. Disallowance of the credit for the entire year in which the noncompliance occurs;
- D. Assessment of interest for the recapture year and previous years;
- E. Notification to IRS via IRS Form 8823;
- E. Negative points on any subsequent RHTC reservation applications;
- F. Rejection of future applications; and/or
- G. Repayment of rent overages.

Part 6.3 Notification of Noncompliance to Owner

IHCDA is required to provide written notice of noncompliance to the Owner if:

- A. Any required submissions are not received by the due dates;
- B. Tenant income certification, supporting documentation, and rent records are not submitted when requested by IHCDA; and/or
- C. The Development is found to be out of compliance through inspection, review, and/or other means with the provisions of Section 42 of the Internal Revenue Code.



IHCDA will not provide documentation (i.e. copies of Form 8823, Form 8609, etc.) for specific Developments to more than one contact person in an ownership entity (usually the general partner) for each Development. If other individuals within an ownership entity wish to receive such documentation, they must obtain it from the contact person named in the Development's Multi-family Housing Finance Application.

Part 6.4 Notifications by Owner to IHCDA

If the Owner or Management Company becomes aware of any noncompliance with the RHTC program requirements, the Rental Housing Tax Credit Monitoring staff must be notified immediately.

Part 6.5 Correction Period

Should IHCDA discover, as a result of an inspection or review, or in any other manner, that the Development is not in compliance with Section 42, or that credit has been claimed or will be claimed for units, which are ineligible, IHCDA shall notify the Owner. The Owner is to commence appropriate action to cure such noncompliance.

The Owner shall have a **maximum** of 90 days from the date of notice to the Owner to cure the noncompliance. If IHCDA determines that there is good cause, an extension of up to six months to complete the cure for noncompliance may be granted.

Part 6.6 Reporting Noncompliance to the Internal Revenue Service

Noncompliance will occur if noncompliance issues are not corrected within a "reasonable" time period. Potential noncompliance of which the Owner or management agent becomes aware must be reported to IHCDA, who will in turn report it to the IRS. The IRS ultimately determines whether or not there is noncompliance.

IHCDA is required to file IRS Form 8823 (*online references at http://ihcda.in.gov/developers_section42.aspx, **Compliance Manual**, Appendix B), "Low-Income Housing Credit Agencies Report of Non-Compliance," with the IRS no later than 45 days after the end of the Correction Period (as described above, including extensions) and no earlier than the end of the Correction Period, whether or not the noncompliance or failure to certify is corrected.*

IHCDA must identify on IRS Form 8823 the nature of the noncompliance or failure to certify and indicate whether the Owner has corrected the noncompliance or failure to certify.

If a building is entirely out of compliance and will not be in compliance at any time in the future, IHCDA will report it on an IRS Form 8823 one time and need not file IRS Form 8823 in subsequent years to report that building's noncompliance.

Part 6.7 Recapture

Recapture is defined as an increase in the Owner's tax liability because of a loss in RHTC due to noncompliance with program requirements.

The IRS will make the determination as to whether or not the Owner faces recapture of RHTC as a result of noncompliance.

IRS Form 8611 (*online references at http://ihcda.in.gov/developers_section42.aspx, Compliance Manual, Appendix B*) is used by taxpayers who must recapture RHTC previously claimed. The Owner must send a copy of IRS Form 8611 to the IRS and IHCD A upon completion.

Part 6.8 Retention of Noncompliance Records by IHCD A

IHCD A will retain records of noncompliance or failure to certify for six years beyond IHCD A's filing of the respective IRS Form 8823. In all other cases, IHCD A will retain the certifications and records for three years from the end of the calendar year IHCD A received the certifications and records.

Section 7 – Glossary

140% Rule: If upon re-certification, a low-income Tenant's income is greater than 140% of the income limit adjusted for family size, the unit will continue to be counted toward satisfaction of the required set-aside, providing that unit continues to be rent-restricted and the next available unit of comparable or smaller size in the Development is rented to a qualified Low-income Household.

20%/50% Test: 20% or more of the residential units must be rented to Households with aggregate Gross Income of 50% or less of the area median Gross Income adjusted for family size.

40%/60% Test: 40% or more of the units must be rented to Households with aggregate Gross Income of 60% or less of the area median Gross Income adjusted for family size.

15%/40% Test: 15% or more of the residential units must be rented to Households with aggregate Gross Income of 40% or less of the area median Gross Income adjusted for family size.
Adjusted Basis: *The cost basis of a building adjusted for capital improvements minus depreciation allowable.*

Annual Household Income: Annual Income of all persons who intend to permanently reside in a unit.

Annual Income: Total Current Anticipated Income to be received by a Tenant from all sources including Assets for the next twelve (12) months.

Annual Income Re-certification: Document by which the Tenant re-certifies his/her income for the purpose of determining whether the Tenant will be considered low-income according to the provisions of the RHTC Program.

Applicable Fraction: The Applicable Fraction is the lesser of a) the ratio of the number of low-income units to the total number of units in the building or b) the ratio of the total floor space of the low-income units to the total floor space of all units in the building.

Applicable Credit Percentage: Although the Credits are commonly described as 9% and 4% credits, the percentages are approximate figures. The U.S. Department of the Treasury publishes the exact credit percentages each month.

Application: Form completed by a person or family seeking rental of a unit in a Development. An Application should solicit sufficient information to determine the applicant's eligibility and compliance with federal and IHCD guidelines.

Applicant: Any owner, principal and participant, including any affiliates associated with a Development that is seeking an award of RHTCs.

Assets: Items of value, other than necessary and personal items, which are considered in determining the eligibility of a Household.



Asset Income: The amount of money received by a Household from items of value as defined in HUD Handbook 4350.3.

Authority: Indiana Housing and Community Development Authority

Certification Year: The twelve (12) month time period beginning on the date the unit is first occupied and each twelve (12) month period commencing on the same date thereafter.

Compliance: The act of meeting the requirements and conditions specified under the law and the RHTC Program requirements.

Compliance Period: The time period for which a building must comply with the requirements set forth in Section 42 of the Internal Revenue Code and credits can be recaptured for noncompliance. The Developments first 15 taxable years.

Correction Period: A reasonable time as determined by the Authority for an Owner to correct any violation as a result of noncompliance.

Credit: Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Credit Period: The period of ten (10) taxable years during which Credit may be claimed, beginning with:

- 1) the taxable year the building is placed in service; or
- 2) at the election of the taxpayer, the succeeding year, but only if the building is a Qualified Low-Income Building as of the close of the first year of such building, and remains qualified throughout succeeding years.

Current Anticipated Income: Gross anticipated income for the next twelve (12) months as of the date of occupancy that is expected to be received by the Tenant(s) including Imputed Income.

Declaration of Extended Low-Income Housing Commitment: The agreement between IHCD and the Owner restricting the use of the Development during the term of the RHTC Extended Use Period.

Developer: Any individual and/or entity who develops or prepares a real estate site for residential use to be a RHTC Development.

Development: Rental housing development receiving a RHTC allocation.

Effective Date of Tenant Certification: The date the Tenant Income Certification becomes applicable. For initial Certifications, this date must be the move-in date of the Tenant. For annual Re-certifications, this date must be no later than one year from the Effective Date of the previous (re) certification.

Effective Term of Verification: A period of time not to exceed one hundred twenty (120) days.



After this time, if the tenant has not yet moved in, new written third party verification must be obtained. A Verification must be within the effective term at time of Tenant's Income Certification.

Eligible Basis: The Eligible Basis of a qualifying Development generally includes those capital assets incurred with respect to the construction, rehabilitation, or acquisition in certain circumstances, of the property, minus non-depreciable costs such as land and certain other items such as financing fees. While it may not include any parts of the property used for commercial purposes, it may include the cost of facilities for use by Tenants to the extent there is no separate fee for their use and they are available to all Tenants. It may also include the cost of amenities if the amenities are comparable to the cost of amenities in other units.

Eligible Basis is reduced by an amount equal to the portion of a building's adjusted basis which is attributable to non low-income units which exceed the average quality standard of the low-income units unless the cost of building the market rate units does not exceed the cost of the average low-income units by more than 15% and the excess cost is excluded from Eligible Basis.

Eligible Basis is further reduced by the amount of any federal grants applied towards the Development, and, should the Owner so elect, it may be reduced by "federal subsidies" to take advantage of the higher applicable RHTC percentage. It is determined without regard to depreciation.

Eligible Tenant: The current tenant of the unit, so long as that tenant is eligible to occupy the unit under the requirements of Section 42 of the Internal Revenue Code. This expressly includes a tenant whose income would not currently qualify under Section 42, but who was qualified at the time of tenant's original occupancy of the unit.

Employment Income: Wages, salaries, tips, bonuses, overtime pay, or other compensation for personal services from a job.

Extended Use Period: The time frame, which begins the first day of the initial 15-year compliance period, on which such building is part of a qualified low-income housing Development and ends 15 years after the close of the Initial Compliance Period, or the date specified by IHCD in the Declaration of Extended Low-Income Housing Commitment.

Fair Market Value: An amount, which represents the true value at which property could be sold on the open market.

First Year of the Credit Period: Either the year a building is placed in service, or, at the Owner's option, the following year.

Gross Income: See Annual Household Income.

Gross Rent: Maximum amount that a Tenant can pay for rent before deducting a utility allowance. **Note:** The Owner must be aware of the year in which the RHTC allocation was made and the specific guidelines that refer to the calculation of gross rent for those years, i.e. 1987, 1988, and 1989 RHTC allocations base gross rent on the actual number of persons residing in the unit.



Household: The individual, family, or group of individuals living in the unit.

IHCDA: Indiana Housing and Community Development Authority

Imputed Income: The estimated earnings of Assets held by a Tenant using the potential earning rate established by HUD.

Income Limits: Maximum incomes as published by HUD for Developments giving the maximum Income Limits per unit for Low-Income (40%, 50% or 60% of median) Units.

Initial Compliance: The 12 month period commencing with the date the building is placed in service. Note: Developments consisting of multiple buildings with phased completion must meet the set-aside requirements on a building-by-building basis with the 12 months commencing with the individual date each building is placed in service.

Initial Compliance Period: A fifteen (15) year period, beginning with the first taxable year in which Credit is claimed, during which the appropriate number of units must be marketed and rented to RHTC eligible Households, at restricted rents.

Inspection: A review of a Development which may be made annually by IHCDA or its agent, which includes an examination of records, a review of operating procedures and a physical inspection of units.

Joint Venture: A combination of one or more independent entities that combine to form a new legal entity for the purpose of this Development.

LIHTC: Low Income Housing Tax Credit. Also, known as Rental Housing Tax Credit (RHTC). Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Lease: The legal agreement between the Tenant and the Owner which delineates the terms and conditions of the rental of a unit.

Low-Income Household/Tenant: Households whose incomes are not more than either 50% or 60% of the median family income for the local area adjusted for family size.

Low-Income Unit: Any unit in a building if:

1. Such unit is rent-restricted (as defined in subsection (g)(2) of IRS Section 42 of the Code);
2. The individuals occupying such unit meet the income limitation applicable under subsection 42(g)(1) to the Development of which such building is part;
3. The unit is suitable for occupancy, available to the general public, and used other than on a transient basis.

Management Company: A firm authorized by the Owner to oversee the operation and management of the Development and who accepts compliance responsibility.

Manager's Unit: *Unit occupied by the full-time resident manager considered a facility reasonably required for the benefit of the project. If the unit is considered common area, the*



manager does not have to be income qualified. If the unit is considered a rental unit, the resident manager would need to be income qualified.

Maximum Allowable Rent Calculation: The Maximum Allowable Rent Calculation includes costs to be paid by the Tenant for utilities inclusive of heat, electricity, air conditioning, water, sewer, oil, or gas where applicable (does not include cable television or telephone).

Maximum Chargeable Rent (Net Rent): Gross Rent less Utility Allowance paid by the Tenant.

Median Income: A determination made through statistical methods establishing a middle point for determining Income Limits. Median is the amount that divides the distribution into two equal groups, one group having income above the median and one group having income below the median.

Minimum Set-Aside: The minimum number of units that the Owner has elected and set forth in the Declaration of Low-Income Housing Commitment to be income and rent-restricted.

Model Unit: A rental unit set aside to show prospective tenants the desirability of the project's units without disturbing current tenants in occupied units. The model unit's cost can be included in the building's eligible basis and in the denominator of the applicable fraction when determining a building's eligible basis.

Narrative Summary: A description written by the Applicant of the need for the Development within the community and the Development itself. This narrative should give an accurate depiction of how this Development will benefit the particular community. Generally, the summary should include the following points:

- Development and unit description
- Amenities - in and around the Development
- Area's needs that the Development will help meet
- Community support and/or opposition for Development
- The constituency served by the Development
- Development quality
- Development location
- Effective use of resources
- Unique features
- Services to be offered
- Address Allocation Plan points **MUST** include pages 3-9 of Form- A (the Application).

Owner: Any individual, association, corporation, joint venture, or partnership that owns a RHTC Development.

Placed in Service Date: For buildings, this is the date on which the building is ready and available for its specifically assigned function, as set forth on IRS Form 8609.

Qualified Allocation Plan: The plan developed and promulgated from time to time by IHCD, which sets out the guidelines and selection criteria by which IHCD allocates RHTC.

Qualified Basis: The portion of the Eligible Basis attributable to low-income rental units. It is



equal to the Eligible Basis multiplied by the Applicable Fraction. The amount of Qualified Basis is determined annually on the last day of each taxable year.

Note: This is the lesser of the Applicable Fraction/Occupancy Percentage:

- a. the proportion of low-income units to all residential rental units; or
- b. the proportion of floor space of the low-income units to the floor space of all residential rental units.

Qualified Low-Income Building: Any building that is part of a qualified low-income housing Development at all times during the period beginning on the first day in the compliance period on which such building is part of such a Development and ending on the last day of the compliance period with respect to such building (Section 42(c)(2)(A) of the Code).

Qualified Unit: A unit in a Qualified Low-Income Building occupied by qualified persons at a qualified rent.

RHTC: Rental Housing Tax Credit. Tax Credit as authorized by Section 42 of the Internal Revenue Code.

Section 8: Section 8 of the United States Housing Act of 1937, as Amended.

Set Aside: Shall mean and require that units designated as “set aside” for a specific population may be used only for the identified population and for no other. If qualified tenants in the designated population are not available, the unit(s) must remain vacant.

Student: Any individual who is, or will be, during each of 5 calendar months (may or may not be consecutive) during the calendar year in which the taxable year of the taxpayer begins, is a full-time Student (as defined by the organization) at an educational organization with regular facilities and Students An education organization is one that normally maintains a regular faculty and curriculum, and normally has enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on. This term includes elementary schools, junior and senior high schools, colleges, universities, and technical, trade and mechanical schools. This does not include on-the-job trainings courses or correspondence schools.

Tax Credit: The Tax Credit amount is calculated by multiplying the Qualified Basis by the Applicable Credit Percentage. The credit percentage, determined monthly, changes so as to yield over a 10 year period, a credit equal to either 30% or 70% of the present value of the Qualified Basis of the building. An Owner may elect to lock in the Applicable Credit Percentage either at the time a Commitment is made by IHCD, or at the time the allocation is made.

Tenant: Any person occupying the unit.

Tenant/ Unit File: Complete and accurate records pertaining to each dwelling unit, containing the Application for each Tenant, Verification of income and Assets of each Tenant, Annual Income Re-certification, utility schedules, rent records, Lease and Lease addendum. Any authorized representative of IHCD or the Department of Treasury shall be permitted access to these files upon receipt by Development Owner or Management Company of prior written notice of not less than two calendar days.

Utility Allowance: The amount of utilities, for a particular unit, set by a Utility Allowance Schedule, which is published by HUD, Rural Development, or PHA, or a letter from the utility company, which states the rates (see IRS Notice 89-6).

Verification: Information from a third-party which is collected in order to corroborate the accuracy of information about income provided by applicants to a Development.

